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ARCHES-COURT LAW.

Being Some late

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PROCEEDINGS

T H E R E I N,

Argued and Adjudged.

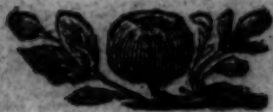
Containing Three remarkable CASES,

V I Z.

I. The CASE of Mrs. WELD, who Libelled her Husband for IMPOTENCY.

II. The CASE of Mrs. LEESON and Lord FITZ-MAURICE, Relating to a MARRIAGE-CONTRACT, these Two confirmed by the DELEGATES *

III. The famous JEW-CASE, between Mr. Jacob Mendes Da Costa and Mrs. Catherine Da Costa Villa Real, Cousin-Germans, Relating to a MARRIAGE-CONTRACT.



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Case of *W. W. W.*, who Libellous has
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THE
CASES
OF
IMPOTENCY *and* VIRGINITY
Fully Discuss'd.

BEING,
The Genuine PROCEEDINGS, in the
Archepiscopate of Canterbury,

BETWEEN
The Honourable *Catherine Elizabeth Weld,*
alias ASTON, and her Husband *Edward Weld,*
Esq; of *Lulworth-Castle in Dorsetshire.*

Published by JOHN CRAWFURD, L.L.D.

CONTAINING,

- | | |
|--|--|
| <p>I. The LIBEL, at large, exhibited against Mr. <i>Weld</i> for IMPOTENCY after three Years Cohabitation.</p> <p>II. His ANSWERS thereto.</p> <p>III. Four other ANSWERS and REPLICATIONS of the PARTIES, to each other's Allegations.</p> <p>IV. Extracts of the DEPOSITIONS and CERTIFICATES on both Sides; and the Reports of the SURGEONS and MIDWIVES appointed to inspect each Party.</p> <p>V. An Account of the Hearing, and Sentence passed.</p> | <p>VI. An APPENDIX of Parallel Cases, and other curious PIECES, viz. 1. The Invalidity of an Un-consummated Marriage. Prov'd by Dr. <i>William Fleetwood</i>, late Bishop of Ely. 2. The CASE of the Lady <i>Frances Howard</i> and the Earl of <i>Essex</i>. 3. The famous Decree of Pope INNOCENT III. concerning Divorces for IMPOTENCY. 4. A Collection of Precedents, shewing, what are the real Proofs of IMPOTENCY; That there are no certain Signs of Virginity in WOMEN; and, that all the pretended Ones may be effected by ART.</p> |
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the Lamb in the Old-Bailey. M.DCC.XXXII.

THE
CLASS

IMPOTENCY and VIRGINITY

Folly Dick's.

DEIN

The Gemini Recordings, in the

The logo of the British Museum, featuring a shield with the text "MUSEUM BRITANNICUM" inside.

Published by JOHN GRAYBARD, L.L.D.

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1940

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Excerpts of the Report

POTTERY; & A Collection
of Pictures, drawings, what are
the best of the

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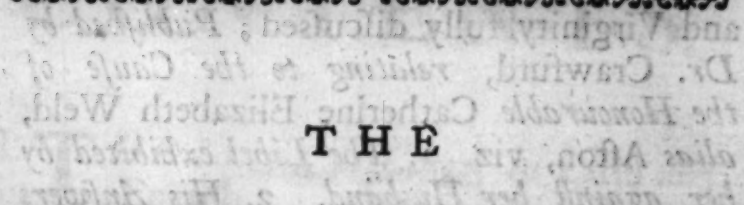
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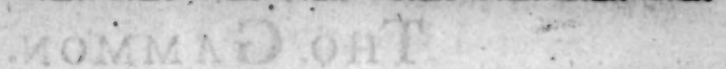
the Lamb in the Old Bailey: MDCCXXXII.

THE Deponent Thomas Gammon, of the Parish of St. Mary White-Chapel, testifies Oath, That the Voucher inserted in



BETWEEN

(Price 2 s. 6 d.)



A F F I D A V I T.

THE Deponent Thomas Gammon, of the Parish of St. Mary White-Chapel, maketh Oath, That the Vouchers inserted in a Book Intituled, The Cases of Impotency and Virginity fully discufsed; Published by Dr. Crawford, relating to the Cause of the Honourable Catherine Elizabeth Weld, alias Aston, viz. 1. The Libel exhibited by her against her Husband. 2. His Answers thereto: With four other Answers of the said Mrs. Weld and her Husband, to Allegations, &c. are true Copies, taken from the Registry of the Arches-Court in Doctor's-Commons, on Stampt-Paper, Sign'd by the Parties themselves, Attested by Dr. Bettelworth, Dr. Strahan, Dr. Andrew, and afterwards examin'd by Mr. Rushworth, Register of the said Court; and delivered to Mr. Barret, Proctor, who was employed to take out the same for the Uses abovementioned.

Jur' apud Serj' - Inn,
Chancery-Lane, 10 die
Martii, 1731. Cor'
RAYMOND.

THO. GAMMON.



. T H E

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P R E F A C E.

IT often happens that a Writer who thinks to divert his Readers scandalizes them; and a CAUSE so important as This, for the Dignity of MARRIAGE, which is the Subject of it; for the Credit and Honour of the Families so unfortunately concerned, and from the unaccountable Effects which may flow from it, requires to be treated in a serious Manner, becoming the Reverence of an Ecclesiastical Court, the Quality of the Parties, more especially on the Lady's Side, and even the Respect which is due to public Decency.

I shall therefore assure my Reader, that I will not lay before him any one Voucher but what has received the Stamp of Authority,
viz.

ii P R E F A C E.

*viz. The Attestation of the Doctor's,
and Register of the Court wherein
the Cause was promulgated.*

The Appendix I have subjoined,
is likewise confirmed by proper Au-
thorities, and the Contents of the
respective Articles are sufficient In-
dications of their Use.

Whatever shall hereafter come to
my Notice, if this Cause any longer
subsists, will be faithfully published
by me,

March 13,

1732.

JOHN CRAWFURD.

I shall therefore assure my Read-
er, that I will not lay before him
any one Voucher but what has re-
ceived the Stamp of Authority.

E Registro Almæ Curia Cantuariensis de Arcubus London, Extract.

IN Dei Nomine, Amen. Coram vobis venerabili & egregio Viro Johannes Bettsworth, Legum Doctore, Almæ curiæ Cantuariens' de Arcubus London' Officiali Principali legitimè constituto; vestrove Surrogato, aut alio Judice in hoc Parte competente quocunq; Pars Honorabilis & discrete Fæminæ Catherinæ Elizabethæ Weld, alias Aston, Uxoris pretensæ Edvardi Weld de Lulworth-Castle, in Comitatu Dorsettiæ, & Diæces. Bristol, Cantuar' Provinciæ, contra dictum Edvardum Weld, ac contra & adversus quemcunq; alium sive quoscunq; alios coram vobis pro eodem in Judicio legitime intervenien' per Viam Querel' ac vobis in hac Parte Querelando omnibus melioribus & efficacioribus Via modo & Juris forma necnon ad omnem quemcunq; Juris effectum dicit allegat & in hijs Scriptis in Jure proponit Articulatim prout sequitur. i. e.

IN the Name of God, Amen. Before you the Right Worshipful John Bettsworth, Doctor of Laws, Official-Principal of the Arches Court of Canterbury, lawfully constituted; or to our Surrogate,

rogate, or any other competent Judge in this Behalf: The Part of the Honourable and Discrete Lady *Catherine Elizabeth Weld*, alias *Aston*, pretended Wife of *Edward Weld* of *Lulworth-Castle*, in the County of *Dorset*, in the Diocese of *Bristol*, in the Province of *Canterbury*, against the said *Edward Weld*, and against any other Person or Persons whatsoever, lawfully appearing in Judgment by Way of Grievance, and to you in this Part by Complaining, doth say, alledge, and propound articulately in Law, in these Writings as followeth, viz.

I. *Imprimis*, Quod prefatus *Edvardus Weld*, & prenominata *Catharina Elizabetha Weld*, alias *Aston*, ad quatuor Annos elapsos ab omni Contractu Matrimoniali liberi & immunes, ac in hujusmodi Libertate & Immunitate notorie existentes de Matrimonio inter eos contrahendo & habendo sapius, seu saltem semel tractarunt & communicaverunt, & ponit pars ista proponens conjunctim divisim & de quolibet.

Imprimis, That the afore-mentioned *Edward Weld*, and the before-named *Catherine Elizabeth Weld*, alias *Aston*, were four Years ago from all Matrimonial Contracts free and clear, and being in such a State of Liberty and Freedom, as it was well known of a Marriage between them to be contracted, and had then often, or at least once, treated and communed, *Et ponit*, &c.

II. *Item*, Quod post tractatum & communicationem hujusmodi prefati *Edvardus Weld*, &

& *Catherina Elizabetha Weld*, alias *Aston*, Matrimonium quemadmodum ipsa *Catharina Elizabetha* tunc existimabat verum purum & legitimum Verba de presenti ad id apta mutuum ipsorum consensum hincinde exprimentes ad invicem de Facto licet de Jure nullitur contraxerunt, posteaq; Matrimonium hujusmodi, quin verus Effigiem Matrimonij, scilicet Vicesimo secundo Die Mensis *Junij*, Anno Domini Millesimo Septingentissimo Vicesimo septimo, per Ministrum, sive Clericum in Sacris Ordinibus, insignit de Facto, etiam solemnizarunt ponit tamen, &c. Et ponit ut supra.

Item, That after such Treating and Communing between the said *Edward Weld*, and the said *Catherine Elizabeth Weld*, alias *Aston*, a Form of Matrimony, which the said *Catherine Elizabeth*, at that Time, thought true, pure, and legitimate, in Words of the present Tense, fit for that Purpose, expressing their mutual Consents by Turns, they *de Facto* (tho' Null *de Jure*) contracted, and afterwards the said Matrimony, or more truly, Appearance of Matrimony, was, on the 22d Day of the Month of *June* 1727, by a Minister, or Clerk in Holy Orders, performed *de Facto*, and solemnized. *Et ponit*, &c.

III. *Item*, Quod prefatus *Edvardus Weld*, Tempore contractus & solemnizationis Matrimonij hujusmodi pretensi, erat fuit & erat *Ætatis* 22 Annorum & ultra, & in presenti est *Ætatis* 25, & ultra; atq; prefata *Catharina Elizabetha Weld*, alias *Aston*, Tempore

contractus & solemnizationis Matrimonij pre-
tensi predicti, fuit & erat Ætatis Juvenilis sci-
licet Ætatis Novemdecim Annorum, sicq; in
presenti est Ætatis ad Generationem aptæ,
scilicet Ætatis 22 Annorum, atq; Tempore
predicto fuit, & erat, sicq; in presenti est ha-
bilis apta & idonea ad procreand' liberos
proq; tali ac ut talis fuit & est commiter dicta
tenta habita & reputata. Et ponit ut supra.

Item, That the said *Edward Weld*, at the Time
of contracting and solemnizing the said pretended
Marriage, was of the Age of 22 Years, and up-
wards, and is now of the Age of 25, and up-
wards; and the said *Catherine Elizabeth Weld*,
alias *Aston*, at the Time of the contracting and
solemnizing of the said pretended Marriage, was
at an Age of Puberty, viz. of Nineteen Years,
and so at the present is Twenty-two Years old;
and at that Time was, hath been, and now is
able, apt, and fit for Generation, and the Procre-
ation of Children, and for such Conjunction and
Procreation, was and is taken and thought to be
able.

IV. *Item*, Quod post contractum & solem-
nizationem hujusmodi pretenso Matrimonij,
seu versus Effigiem ejusdem, prefati *Edwar-
dus Weld*, & *Catharina Elizabetha Weld*, alias
Aston, per tres Annos tanquam, viz. & Uxor
scilicet apud *Lulworth-Castle*, pred. & apud
Standon, in Comitatu *Hertfordiæ*, ac infra Pa-
rochiam Sancti *Georgij*, in Comitatu *Middle-
sexia* cohabitarunt, dictumq; *Edvardus Weld*,
sanus integer atq; in bona Corporis valetu-
dine

dine constitutus, exceptis postea allegandis, cum eadem *Catharina Elizabetha Weld*, alias *Aston*, in uno & eodem lecto, solus cum sola, nudus cum nuda, per plures Noctes integras decubuit & dormivit, & dedit operam. Et ponit, &c. ad carnalem coitum, & ponit ut supra.

Item, That after the contracting and solemnizing of this pretended Marriage, or rather Shew thereof, the said *Edward Weld*, and *Catherine Elizabeth Weld*, alias *Aston*, by the Space of three Years, as Man and Wife, viz. at *Lulworth-Castle*, aforesaid, and at *Standon*, in the County of *Hertford*, and in the Parish of *St. George, the Martyr*, in the County of *Middlesex*, cohabited, the said *Edward Weld* in sound and good Health being, except as is afterwards alledged, with the said *Catherine Elizabeth Weld*, alias *Aston*, in one and the same Bed, naked and alone, for the Space of several whole Nights, lay and slept, and gave Opportunity of carnal Conversation. Et ponit, &c.

V. *Item*, Quod prefatus *Edvardus Weld*, premissis non obstan' licet dicta *Catharina Elizabetha Weld*, alias *Aston*, ad cocund. habilis esset & idonea coitumq; & amplexum ejus enixe appeteret cum ea tamen non coivit, nec coire potuit ita quod nunquam se invicem cognoverunt. Et ponit ut supra.

Item, That the said *Edward Weld*, the Premises notwithstanding, and tho' the said *Catherine Elizabeth Weld*, alias *Aston*, was able and fit for Coition, and the same earnestly desired, yet with her

her he did not Converse, nor could not Converse carnally, so that they in *that manner* never knew each other.

VI. *Item*, Quod in rei veritate prefatus *Edvardus Weld*, toto & omni pred. anteaq; & citra fuit & sic in presenti est frigidus naturaliter ad experientiam copulæ carnalis & ad coitum omnino inhabilis & impotens, ac talis qui Fæminam cognoscere, aut debitum conjugale per solvere nunquam potuit, neque poterit, sed naturali & perpetuo Frigiditatis & Impotentiae Impedimento laboravit, & laborat & tali quod nulla Medicorum, Arte, vel Ope possit removeri prout per Judicium & Inspectionem Medicorum manifestius liquebit & apparebit. Et ponit ut supra.

Item, So that in Truth the said *Edward*, throughout all that whole Space, was and is naturally frigid, and for all carnal Copulation utterly unapt, and impotent; and so in knowing a Woman, or in satisfying the conjugal Rights, never could, nor ever can comply, but under a natural and perpetual Frigidity and Impediment of Impotency, laboured, and still labours in such a manner, as no Medicine, Art, or Remedy can remove, as by the Judgment of Physicians, on Inspection manifestly appears.

VII. That after the said pretended Marriage, and during the Time of the Cohabitation of the said *Edward Weld*, and *Catherine Elizabeth Weld*, alias *Aston*, his pretended Wife, the said *Edward Weld*, being sensible of his natural Impotency and Frigidity, did apply to Physicians and Surgeons,

geons, and particularly to *John Williams*, a Surgeon, for Advice and Relief for and concerning such his Impotency and Frigidity, and the said *John Williams* did advise him to consult Doctor *Mead* for his Assistance therein; and this was and is true. *Et ponit ut supra.*

VIII. *Item*, That the said *Edward Weld* did several Times, during the Time of his Cohabitation with the said *Catherine Elizabeth Weld*, alias *Aston*, and more particularly, in the Months of *June* and *July*, in the Year 1729, and at several other Times in the said Year, own and confess to the most Noble Duke of *Norfolk*, *Adam Colclough*, Esq; and others, That he had not consummated his Marriage with the said *Catherine Elizabeth Weld*, alias *Aston*, by having the carnal Knowledge of her Body; or expressed himself to the same Effect: And that he had taken Advice of a Surgeon and Doctors, and particularly the Advice of the said *John Williams*, for and concerning such his Frigidity or Impotency, but all that he or they could do to; or give him, would not help him, or signify any thing, or have any Effect upon him; *ex eo quod Penim suum nunquam erigere potuit vel dictam Catharinam Elizabetham Weld, alias Aston, penetrare & cognoscere*; (nor could they cause any valid Erection of his *Penis*, whereby he might be able to penetrate, or have carnal Knowledge of his Wife) altho' within the said Time he did often attempt it; and he the said *Edward Weld* did several Times within the said Months of *June* and *July*, in the said Year 1729, and at several other Times in the said Year, express himself to the same Effect, to the said *Adam Colclough*, Esq; and others, *Et ponit ut supra.*

IX. *Item*,

her he did not Converse, nor could not Converse carnally, so that they in *that manner* never knew each other.

VI. *Item*, Quod in rei veritate prefatus *Edwardus Weld*, toto & omni pred. anteaq; & citra fuit & sic in presenti est frigidus naturaliter ad experientiam copulæ carnalis & ad coitum omnino inhabilis & impotens, ac talis qui Fæminam cognoscere, aut debitum conjugale per solvere nunquam potuit, neque poterit, sed naturali & perpetuo Frigiditatis & Impotentia Impedimento laboravit, & laborat & tali quod nulla Medicorum, Arte, vel Ope possit removeri prout per Judicium & Inspectionem Medicorum manifestius liquebit & apparebit. Et ponit ut supra.

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IX. Item,

IX. *Item*, That by reason of the Premises, there was and is a publick Report and Fame, that the said *Edward Weld* is frigid, impotent, and insufficient, and not capable of knowing a Woman carnally; and the said *Catherine Elizabeth Weld*, alias *Aston*, being sensible of the natural Impotency and Frigidity of the said *Edward Weld*, doth refuse to live and cohabit with him, and doth now live separate from him. *Et ponit ut supra.*

X. *Item*, Quod prefatus *Edwardus Weld*, fuit ac est de *Lulworth-Castle*, in Comitatu *Dorsettae*, Dioces. *Bristol Cantuar* Provincia ac ratione earum *Requisitor* in hac parte concessarum *Juris*. hujus *Curiae* subditur & subjectus, & ponit ut supra.

Item, That the said *Edward Weld* was and is of *Lulworth-Castle*, in the County of *Dorset*, in the Diocese of *Bristol*, in the Province of *Canterbury*; and by reason thereof, her Request in this Part is legally in the Jurisdiction of this Court, and ought thereto to be submitted.

XI. *Item*, Quod *Premissa omnia & singula fuerunt & sunt vera publica & notoria pariter & manifesta*, ac de & super eisdem laborarunt & laborant publica *Vox & Fama*, unda facta fide de jure in hac parte requisita petit pars ista proponens, *Jus & Justitiam* sibi & *Parti suæ fieri & ministrari* cum effectu *Matrimoniumq;* pretensum inter *Dominum Edwardum Weld*, & *Catharinam Elizabetham*

betham Weld alias *Aston*, utcunque de facto,
solemnizatum nullum & invalidum ab initio
fuisse ac esse proque nullo & invalido, pro-
nuntiari & declarari dictumque *Edvardum*
Weld, in expensi litis in hac causa factis, &
faciendis condemnari.

Cat. Eliz. Weld,
alias *Aston.*

Gul. Strahan.

J. Andrew.

Exam^t B. Rusbworth, Registrarius.

C

The

The Personal Answers of Edward Weld, Esq; Party in this Cause, made to a Libel admitted on the Part and Behalf of the said Catherine Elizabeth Weld, as followeth, viz.

TO the First and Second Articles of the said Libel this Respondent answers, and believes the same to be true.

To the Third Article of the said Libel this Respondent answers, that he believes the same to be true.

To the Fourth Article of the said Libel this Respondent answers, That from the time of the Marriage Libellate, this Respondent and his Wife, the Articulate *Catherine Elizabeth*, lived together at the Respondent's Seat, called *Lulworth Castle*, for a Year, or thereabouts, (to wit) 'till in or about the Month of *June*, 1728. excepting for about one Month within the said time; and she being then indisposed in her Health came to *London*, for the Advice and Assistance of Physicians, and never afterwards returned to the Respondent's said Seat, and believes that she then went to the House of her Grandmother, the *Lady Howard*, in *Ormond-street*, in the County of *Middlesex*, and continued there, or at the House of her Father, the Lord *Aston*, at *Standon* in the County of *Hertford*, 'till the Month of *October* following, and denies that he the Respondent ever cohabited with her within the said time; and in the said Month of *October*, he the Respondent went to her

her at the House of her said Father, where she the said *Catherine Elizabeth*, and he the Respondent cohabited as Man and Wife for about three Weeks, or a Month, and not longer; and then he the Respondent returned to his Seat before-mentioned, leaving her at her said Father's House, and he the Respondent continued at his said Seat 'till the Month of *February* One Thousand Seven Hundred and Twenty Eight-Nine, and then returned to her at her said Father's Seat, where they then cohabited as Man and Wife for about three Weeks, and not longer, and then left her there, and went home to his said Seat, and continued there till in or about the latter end of *May* following, and then went to her again at *Standon* afore said; and they then cohabited as Man and Wife for about a Week, and not longer, and they then went from *Standon* to her said Grandmother, at her then Dwelling-house in *Red-Lyon Square*, which House he believes to be in the Parish articulate, and they there cohabited as Man and Wife for five or six Weeks, or thereabouts, but not longer; and then the Respondent left her there, and returned home, and staid there 'till *November* following, and then went to her again at her said Father's Seat at *Standon* afore said, where they cohabited as Man and Wife for about three or four Weeks, and not longer, and then left her there, and from that time has not seen her; and this Respondent during all the Nights within the times before-mentioned of his cohabiting with the said *Catherine Elizabeth*, did lie in the same Bed with her, *Nudus cum Nuda & Solus cum Sola* *, and he the Respondent was in good Health of Body at all the said times, and otherwise

* Naked and Alone.

this Respondent referring himself to his Answers to the next subsequent Article, does not believe, and denies the said Fourth Article to be true in any Part thereof.

To the Fifth Article of the said Libel this Respondent answers, That he believes that the said *Catherine Elizabeth Weld* was *habilis apta & idonea, &c.* * as articulate during the time articulate, and saith that he the Respondent did frequently, within the said time, endeavour to have carnal Copulation with her the said *Catherine Elizabeth*, and did once, or twice, carnally know her, (as he verily believes) within the said time; and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the Sixth Article of the said Libel this Respondent answers, and denies the same to be true in any Part thereof.

To the Seventh Article of the said Libel this Respondent being accused of natural Impotency, did consult with one *John Williams*, a Surgeon, who advised the Respondent to apply himself to *Doctor Mead*, but he the Respondent never did advise or consult with the said *Doctor Mead*, or any other Physician, except *Doctor Strother*, concerning the same; and otherwise this Respondent does not believe, but denies the said Article to be true in any Part thereof.

To the Eighth Article of the said Libel this Respondent refers himself to his Answers to the foregoing Seventh Article, and otherwise does not believe, but denies the said Article to be

* Able, apt, and fit for the Procreation of Children.

true in any Part thereof, saving that at or about the time articulate, he the Respondent at different times in Discourse with the Duke of Norfolk, and the articulate Mr. Colclough, separately did declare that he had not Consummated his Marriage, except his *thinking and really believing that he had once or twice entered her Body could be called a Consummation, or to that Effect.*

To the Ninth Article of the said Libel this Respondent answers and believes, That the said *Catherine Elizabeth Weld*, from the Twenty Second Day of *June* last past has refused, and does now refuse to cohabit with this Respondent, upon a Pretence of a natural Impotency and Frigidity in him, and otherwise does not believe, but denies the same to be true in any Part thereof.

To the Tenth this Respondent believes the same to be true.

To the Last he answers, That he believes, what he has believed; and denies, what he has denied.

Edward Weld.

*Responsa supra scripta capta fuerunt
vicesimo quarto die Novembris,
1730.*

Per me J. BETTESWORTH.

Presente me B. RUSHWORTH, N. P. Regist.

Exam. B. RUSHWORTH, Regist.

The

The Personal Answers of Catherine Elizabeth Weld, Party in this Cause, made to an Allegation admitted on the Behalf of Edward Weld, Esq; as follows, viz.

TO the *First* Article of the said Allegation this Respondent answers, That she believes the same to be true.

To the *Second* Article of the said Allegation this Respondent answers, That she believes the said Article to be true, saving that she had been at *London* and *Standon* but about a Fortnight or three Weeks, and not longer, before the articulate *Edward Weld* came to her.

To the *Third* Article of the said Allegation this Respondent referring herself to her foregoing Answer to the *Second* Article believes the said *Third* Article to be true.

To the *Fourth* Article of the said Allegation this Respondent answers, That on the *Sixteenth* Day of *July*, 1728, and not before, she the Respondent being much indisposed in her bodily Health, came from the Seat or Habitation of the articulate *Edward Weld*, at the Place articulate, to *London*, for the Advice of Physicians, and he the said *Edward Weld* came with her from his said Seat to the City of *Salisbury*; and he the said *Edward* then returned home, and she the Respondent continued at *London*, and in *Staffordshire*, and *Hertfordshire*, 'till the
Sixth

Sixth Day of *November* following, during all which time she lived separate and apart from the said *Edward Weld*, and they did not live or cohabit together at Bed or Board, within the said time, and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the *Fifth* Article of the said Allegation this Respondent believes that on the *Seventh* Day of *November*, 1728. the said Mr. *Weld* came to the Respondent, at the House of the Lady *Howard*, in *Ormond-street*, and there being no Convenience for his lying there that Night, he went away, and returned to her the next Day, and cohabited with her there at Bed and Board, for four or five Days, and then they went together to *Standon*, and he there staid with her for about three Weeks, during which time they cohabited together at Bed and Board, but denies that he then desired the Respondent to go home with him; and otherwise the Respondent believes the said Article to be true.

To the *Sixth* Article of the said Allegation this Respondent believes that on the *Eighteenth* of *February* articulate, the said Mr. *Weld* came to the Respondent at her Father's House at *Standon* articulate, and continued to live with her there till on or about the *Twentieth* Day of *March* following; and that he then went home to his Seat aforesaid, and continued there till the Month of *May* following, without the Company of the Respondent; and otherwise she denies the said Article to be true in any Part thereof.

To the *Seventh* Article of the said Allegation this Respondent answers, and believes, that
on

on or about the *Twenty Eighth* Day of *May*, 1729. the said Mr. *Weld* came to the Respondent at her Father's House at *Standon* aforesaid, and there continued with her for about ten Days, and he the said Mr. *Weld*, within the said time, asked the Respondent to go home with him to *Lulworth-Castle* aforesaid, and she the Respondent consented to the same, and thereupon came with him to the House of the Lady *Howard*, in *Ormond-street*, where she the said Lady *Howard* then lived, and they there continued to live together for upwards of seven Weeks, and she the Respondent was in daily Expectation of going with him for all the said Time, and denies that she ever refused to go home with him; and otherwise this Respondent does not believe the said Article to be true in any Part thereof.

To the *Eighth* Article of the said Allegation this Respondent answers, That she the Respondent wrote the Letter articulate on, or about, the *Eighth* Day of *August*, 1728. without the Knowledge of the articulate Mr. *Weld*; and hath been informed, and believes, that his Mother, Brother, and Sister did, upon occasion of the said Letter, remove from his Seat at *Lulworth-Castle* aforesaid, in, or about, the Month of *May*, 1729. and otherwise she does not believe, and denies the said Article to be true in any Part thereof.

To the *Ninth* Article of the said Allegation this Respondent answers, and believes, That in the Month of *July*, 1729. the said Mr. *Weld* went from *London* to his Seat at *Lulworth-Castle* aforesaid; and that he had then some
Affairs

Affairs which required him to be there, and that he continued there without the Company and Conversation of the Respondent 'till the Month of *November* following, and that on the *Seventeenth* Day of the said Month, he came to the Respondent at her Father's House at *Standon* aforesaid, and continued to live with the Respondent there 'till the *First* Day of *December* following; and otherwise this Respondent denies the said Article to be true in any Part thereof.

To the *Tenth* Article of the said Allegation this Respondent answers, and believes, That on the *Twentieth* Day of *December*, 1729. the said Mr. *Weld* came to the Respondent at her Father's House before-mentioned, and continued there 'till the *Eighth* Day of *January* following, and that on the *Thirty-first* Day of the said Month of *December*, he told the Respondent, that he intended in two or three Days to go to *Lulworth-Castle*, and asked the Respondent if she would not go with him, whereupon she the Respondent saying, *How do you think my Father will like it?* He replied, *Indeed I don't know.* And he the said Mr. *Weld*, after that time, notwithstanding his continuance there 'till the *Eighth* of *January* following, never mentioned any thing to her about her going with him to *Lulworth-Castle*; and otherwise this Respondent denies the said Article to be true in any Part thereof, saving she believes that the said Mr. *Weld* has not seen the Respondent since the *Eighth* Day of *January* last past.

To the *Eleventh* Article of the said Allegation, and to the Letter therein exhibited, this Respondent believes the said Article and Letter to be true in every Part thereof.

Catherine Weld.

*Responsa supra scripta capta fuerunt
undecimo Decembris, 1730.*

Per me J. BETTESWORTH.

Presente me B. RUSHWORTH, N. P. Regist.

Exam. B. RUSHWORTH, Regist.

The

The Personal Answers of Edward Weld, Esq; Party in this Cause, made to an Allegation admitted on the Part and Behalf of the said Catherine Elizabeth Weld, the Third Session of Hillary Term, 1730.

TO the *First* Article of the said Allegation this Respondent believes the same to be true, saving he denies that the said *Catherine Elizabeth* went from *Lukworth-Castle* to *London*, at the time articulate, for the Recovery of her Health; and believes that the same was in order to be present at the Marriage of her Uncle, the Honourable *Edward Howard*, Esq; and for no other Intent or Purpose whatsoever.

To the *Second* Article of the said Allegation this Respondent answers, and believes, the same to be true in every Part thereof.

To the *Third* Article of the said Allegation this Respondent answers, that he believes the same to be true in every Part thereof.

To the *Fourth* Article of the said Allegation this Respondent answers, that referring himself to his foregoing Answers to the

First Article, he believes the said *Fourth* Article to be true in every Part thereof.

To the *Fifth* and *Sixth* Articles of the said Allegation, and to the Letter N^o 1. exhibited in the said *Sixth* Article, this Respondent answers, That he believes the said Articles and Letter to be true in every Part thereof.

To the *Seventh* Article of the said Allegation this Respondent answers, That he believes the same to be true in every Part thereof, saving that he the Respondent had Affairs of his own, which required his Presence at *Lukworth-Castle* at the time articulate.

To the *Eighth* and *Ninth* Articles of the said Allegations and to the Five Letters exhibited in the said *Ninth* Article, severally marked N^o 2, 3, 4, 5, and 6. this Respondent answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Tenth* Article of the said Allegation this Respondent answers, That he believes the same to be true in every Part thereof.

To

To the *Eleventh* and *Twelfth* Articles of the said Allegation, and to the Five Letters exhibited in the said *Twelfth* Article, severally marked N^o 7, 8, 9, 10, and 11. this Respondent answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Thirteenth* Article of the said Allegation this Respondent answers, That he the Respondent, at the time articulate, went to the articulate *Catherine Elizabeth*, at the Lord *Aston's*, at *Standon*, and continued with her there the time articulate, within which time he the Respondent proposed to her the said *Catherine Elizabeth* to go with him to *Lukworth-Castle*, and to set out, or begin their Journey in two or three Days after the Respondent's proposing the same, and she then refused to go so soon as he proposed; and the said Lord *Aston*, on the same Day, desired of the Respondent to stay at *Standon* three or four Days longer than the said time proposed, adding, that then they might all of them (meaning his Lordship, the said *Catherine Elizabeth*, and the Respondent) go together to *London*: And farther answers, That on the *Seventh* of *June* articulate, he the Respondent, and the said *Catherine*, went from the said Lord *Aston's* to the House of the Lady *Howard*, in *Ormond-street*, and continued there together at

Bed

Bed and Board 'till the *Twenty-ninth* Day of *July* following, and believes that the said *Catherine Elizabeth* was for all the said time in daily Expectation of the Respondent's fixing a time for her going with him to *Lulworth-Castle*, but he the Respondent did not, within the said time, ask, or desire her the said *Catherine Elizabeth* to go with him thither, or fix any time for their Journey, by reason that he the Respondent had, within the said time, mentioned to the said Lord *Aston* his the Respondent's Intention of carrying the said *Catherine Elizabeth* to *Lulworth-Castle*; and he the said Lord *Aston* had refused to permit her to go thither with him; and had told the Respondent, that he the Respondent could not insist upon her going with him thither: And farther saith, that he the Respondent, on the said *Twenty-ninth* Day of *July*, 1729. began his Journey for *Lulworth-Castle*, without her the said *Catherine Elizabeth*, leaving her at the House of the said Lady *Howard*; and otherwise this Respondent does not believe, and denies the said Article to be true in any Part thereof.

To the *Fourteenth* Article of the said Allegation this Respondent answers, That he believes that the said *Catherine Elizabeth* cohabited with the Respondent at the House of the Lady *Howard*, during the time articulate, at his the Respondent's Desire, but does not believe, and denies that she continued there,
and

and at the Lord *Aston's*, after the Respondent was gone to *Lulworth-Castle*, until the Respondent's Return to her with the Respondent's Consent, or good liking; and he the Respondent did not return to her 'till the *Seventeenth Day of November, 1729.* and otherwise does not believe, and denies the said Article to be true in any Part thereof.

To the *Fifteenth* and *Sixteenth* Articles of the said Allegation, and to the Seven Letters marked N. 12, 13, 14, 15, 16, 17, and 18. exhibited in the said *Sixteenth* Article, this Respondent referring himself to the Contents of the said Letters answers, That he believes the said Articles and Letters to be true in every Part thereof.

To the *Seventeenth* and *Eighteenth* Articles of the said Allegation, and to the Letter exhibited in the said *Eighteenth* Article this Respondent answers, That he believes the said Article and Letter to be true, saying that he the Respondent, at the time articulate, told the said *Catherine Elizabeth* that he intended to go for *Lulworth-Castle* in a few Days, and she the said *Catherine Elizabeth* then refused to go thither with him, alledging, that she had received ill Usage from the Respondent's Mother, and he the Respondent telling her that she herself had taken care to remove that Objection, by causing his said Mother to remove from the Respondent's

dent's House, she the said *Catherine Elizabeth* then told the Respondent, that the Weather was too bad to take such a long Journey at that time of the Year; and, saying that, he does not believe that she the said *Catherine Elizabeth* did then ask the Respondent, *How he thought her Father would like her taking such a Journey at that time of the Year?*

To the *Nineteenth* Article of the said Allegation this Respondent answers, That he the Respondent, at the time articulate, left the said *Catherine Elizabeth*, at her Father's House articulate, and went from thence to *London*, to the *Lady Howard's*, and continued there for about three or four Days, within which time, he the Respondent told the said *Lady Howard* that he was going to *Lulworth-Castle*, and that he had asked the said *Catherine Elizabeth* to go with him, and that she had refused: And the said *Lady Howard* then said, *perhaps you asked her in such a manner that no body could think you was in earnest*; and thereupon the Respondent replied, that he never had asked her, nor ever would ask her, in any other manner than what he the Respondent should think was very civil: And then upon telling the Respondent that she believed that the *Lord Aston* had been to advise with Counsel concerning the Respondent's not having Consummated his Marriage; and advising the Respondent to go

to *Counsel concerning the same*; he the Respondent told her, that *there was no Occasion to advise with Counsel about it, and that many married People had lived together like Brother and Sister, and that he the Respondent did not see any Reason why he the Respondent, and the said Catherine Elizabeth could not do the same*: And otherwise this Respondent does not believe, and denies the said Article to be true in any Part thereof.

To the *Twentieth* Article of the said Allegation, this Respondent referring himself to his foregoing Answers to the *Thirteenth, Seventeenth, and Eighteenth* Articles answers, That he believes the said *Twentieth* Article to be true in every Part thereof.

To the *Twenty-first* Article of the said Allegation this Respondent answers, That he believes the same to be true in every Part thereof.

To the *Twenty-second* Article of the said Allegation this Respondent answers, That at the time articulate, the said *Catherine Elizabeth*, speaking to the Respondent, expressed these, or the like Words, *My dear, we ought not to live together after this manner*; and the Respondent asking her, *why?* she replied, *My dear, you have not Consummated your Marriage*; and the Respondent told her, that *he had*; and she then saying, *you have not*; he again told her, that *he had*; adding these,

or the like Words; My dear, if it appears, after living together our three Years, (meaning three Years from the time of their Marriage) that I have not, we must e'en part Bed, for we cannot in Conscience lie any longer together: And otherwise this Respondent does not believe, and denies the said Article to be true in any Part thereof.

Catherine Weld.

*Responsa supra scripta capta fuere
decimo Februarij, 1730.*

Per me J. BETTESWORTH.

Presente me B. RUSHWORTH, N. P. Regist.

Exam^r. B. RUSHWORTH, Regist.

The Personal Answers of Catherine Elizabeth Weld, alias Aston, Party in this Cause, made to an Allegation admitted on the Part and Behalf of Edward Weld, Esq; on the 14th Day of July, 1731. as follows, viz.

TO the First Article of the said Allegation this Respondent answers, That she believes the said Edward Weld to be Twenty-six Years of Age, but does not believe that he has all the Parts of his Body, (which constitute a Man, perfect and entire, and which
Nature

Nature has formed and designed for the Propagation of his Species, or the Act of Carnal Copulation,) in full and just Proportion, or that he was, or is, capable of carnally knowing this Respondent, or any other Woman, by reason that he has not Consummated his Marriage with her the Respondent; and otherwise she denies the said Article to be true in any Part thereof.

To the Second Article of the said Allegation this Respondent answers, That she does not believe, but denies the same to be true in any Part thereof.

To the Last she answers, That she believes what she hath believed, and denies what she hath denied.

Catherine Weld.

*Responsa supra scripta capta fuerunt
vicesimo quarto die Novembris,
1731.*

Per me J. BETTESWORTH.

Presente me B. RUSHWORTH, N.P. Regist.

Exam. B. RUSHWORTH, Regist.

The Personal Answers of Catherine Elizabeth Weld, alias Aston, Party in this Cause, made to an Allegation admitted on the Part and Behalf of Edward Weld, Esq; on the third Day of November, 1731. follow, viz.

TO the First Article of the said Allegation this Respondent answers, That she believes that within the time articulate, the said *Edward Weld* did often endeavour to Consummate his Marriage with the Respondent, but denies that he ever Consummated the same. And otherwise she does not believe, but denies the said Article to be true in any Part thereof.

To the Second she answers, That she believes, what she hath believed; and denies, what she hath denied.

Catherine Weld.

*Responsa supra scripta capta fuerunt
vicesimo die Novembris, Anno
Domini 1731.*

Per me J. BETTESWORTH.

Presente me B. RUSHWORTH, N. P. Regist.

Examt. B. RUSHWORTH, Regist.

DEPO-

DEPOSITIONS in this CAUSE. For the LADY, were these following, viz.

I.

THE Lady HOWARD deposes, That she well knows the Defendant *Edward Weld*, Esq; and is acquainted with the Uneasinesses in his Family, relating to the Matter in Question. That she hath seen him in his Study at Two of the Clock in the Morning, and hath spoken to him as far as Modesty would permit. That he hath owned to her Ladyship the *Truth of the Charge of Insufficiency*, at least that he believed himself so.

II.

The Right Honourable the Lord ASTON deposes, That his Daughter hath several times complained to him with relation to the Matter in Question; and, That the Defendant, *Edward Weld*, Esq; hath acknowledged the Substance of those Complaints to be true.

III.

His Grace the Duke of *Norfolk* deposes, That the said *Edward Weld*, Esq; hath made him the like Confessions of his Inability
to

to Consummate his Marriage, and the Concern he expressed for the same.

IV.

Adam Colclough, Esq; deposes, to the same Purport as the two foregoing Depositions in General, but more particularly, as to the serious Discourse he, Himself, had with Mr. *Weld* on the Matter in Question.

And, That Mr. *Weld* did express to Him the great Uneasiness and Concern he was under for this, *his Inability*, acknowledging the Charge to be true, and that he had never Consummated his Marriage. Mr. *Weld* likewise declared that, in order to be freed from this grievous Infirmary, he intended to apply himself to Dr. *Mead*. And, That he afterwards told him he had applied to Dr. *Strother*, and by his Advice made farther Application to a Surgeon, who did prescribe some things in order to redress this his Impediment; which, as he, the said Mr. *Weld*, said had in some measure Success, and did strengthen his Member, so as to render him more apt for Coition; yet, the said Mr. *Weld*, could not but acknowledge, that, he had not, as yet, Consummated his Marriage, even after all that had been done to him by the Surgeon, and of which he had expressed such Hopes.

V.

In another Deposition, *Adam Colclough*, Esq; farther deposes, That *Mr. Weld*, not only, acknowledged to him the Truth of what is contained in the foregoing Deposition, but descended into these Particulars, as to his Incapacity, *viz.* That whenever he attempted to have *Carnal Knowledge of his Wife*, he was seized with a violent Pain across his Belly, which so contracted his Privities, and put him to so great Torture, that he was obliged to desist from such Caresses.

VI.

A Certificate of Three experienced Midwives declareth, The Honourable *Catherine Elizabeth Weld* to be, *Virgo intacta*, A pure and untouched Virgin. That her Parts of Generation are in such a State as render her capable of *Conjugal Embraces*, no Defect in their Formation, or otherwise, appearing. And, that on their Inspection they are fully convinced, That *it is impossible she can have had any Carnal Conversation with a Man.*

DEPO-

DEPOSITIONS on the Part of the
Defendant, in this CAUSE, *viz.*

I.

MR S. *Weld*, the Mother of *Edward Weld*, Esq; deposes, That the Complainant, her Son's Wife, told her, within the first Year of her Marriage to Mr. *Weld*, *that she believed her self to be with Child by her said Husband the Defendant.* That she, hath been several times present with her said Daughter-in-law, the Complainant in this Cause, when she was very squeamish, disordered and indisposed in such a manner, that she took these Indications to be Signs of Breeding.

II.

John Williams, Surgeon, deposes, That Mr. *Weld* had a Weakness in his *Seminal-Vessels*; but that he had prescribed him some proper Medicaments for the same, by which he apprehends such Impediment is now removed: and he is now firmly of Opinion that Mr. *Weld* is a Man capable and sufficient for Generation.

III. Mr.

III.

Mr. Sergeant-Surgeon *Dickins*, and other Surgeons depose, That *Midwives* are not, in their Opinions, competent Judges of a Woman's *Virginity*, because such Judgment depends on a perfect Knowledge of the natural Situation, and Extent of the *Parts* ministring to *Generation*, and a right Idea of the Alterations therein, made thereby. *

This Cause was determined in the *Arches Court of Canterbury at Doctors-Commons* (Feb. 13. 1731-2.) when it went in Favour of the Husband, upon the following Particulars, viz.

IT was deposed by five eminent Surgeons, that tho' there had been some *Impediment* in the Husband, yet now by their Skill that *Impediment* was removed; and declard it was impossible for *Midwives* to tell whether the Lady was, *Virgo intacta*, a pure Maid or not.

The Affidavits, Interrogatories, and Certificates relating to the said Cause were se-

* It may not be improper to consult *Monsieur Dionis's* most curious *Dissertation* on this Subject, which is translated from the *French* Original, and annexed to, *ONANISM Displayed*, 12^o. 1726.

verally read, as were also 19 Letters that had passed between the Gentleman and his Lady. And likewise his Answer to his Wife's *Interrogatory* of his not having had Carnal Knowledge of her for three Years after their Marriage, in which he asserted, that he *believed* he had *such Knowledge* of her twice within the first Year. This Point was learnedly argued by his Counsel, who asserted That to be sufficient to prevent the Marriage being set aside; but this was answered by the opposite Counsel, that if the Gentleman could not swear *positively*, it look'd as if he was not a competent Judge of what was meant by the Words. The whole was merrily harangued on by both Parties, and several smart Repartees, as may be supposed from the Nature of the Subject, passed between the Counsel on both Sides; but the Judge, Dr. *Bettesworth*, gave it as his Opinion, that if the Marriage should be disannulled, and the Parties severally marry again, and the Man should have Children by a Second Wife, that then his Marriage with her must be void, and he must go and live with the first Wife; * so directed them to live together again.

However, all that can be said against the *Validity* of an unconsummated Marriage is most learnedly and judiciously urged by Bi-

* See, The Decree of Innocent III. on this Head. *Appendix*, N^o III.

shop *Fleetwood* in his PLEA, in the Case of Sir *George Downing*, and Mrs. *Forrester*, to which we refer. †

The Argument for the *real* and *pretended* Marks of *Virginity*, is, we hope, also Dilated and Exhausted by the Authorities produced. §

Exactly parallel to this of Mrs. *WELD*, is that well known CASE of the Lady *FRANCIS HOWARD*, 1613. Seven *Midwives* being appointed to make Inspection upon this Lady's Body, did Report that *She* was fit for *Copulation*, and to *bring forth Children*; and that the said Lady was a *Virgin*, and uncorrupted. Upon which there was a *Sentence of Divorce* given for the *Nullity* of the *Marriage*, and both Parties Licensed to be married again. See farther Particulars, relating to the Earl of *Essex* and the Lady *Francis Howard*, in our *Appendix*. N^o IV. & seq.

A MEMORIAL of the Nature of CAUSES of this Kind.

THO' Matters of Fact may seem to lie plainly before us, we cannot determine either in behalf of the *Complainant* or *Defendant*, 'till a thorough Enquiry be made, into the *True Doctrine of the Church* con-

† See *Appendix*, N^o I.

§ *Appendix*, N^o II.

cerning MARRIAGE, pursuant to which, and the present Condition of *Ecclesiastical Laws*, will be shewn that *Good* or *Evil CONFIRMATION* is the only *necessary lawful Proof* of *IMPOTENCY*; and that *all other Proofs*, as being either *unlawful* or *uncertain* are to be set aside and rejected.

For, upon the joint System of Religion and Law, this whole Cause turns. The *first* Proof we shall offer is founded, upon the Spirit of the Church, and the Purity of its Doctrine, viz.

The Spirit or Mind of the Church, is no other than that of *Jesus Christ*, in the Holy Institution of MARRIAGE; and as the Mind of *Jesus Christ*, in raising Marriage to so great a Dignity by his Presence, was to render it *indissoluble*, the Mind or Intention of his Church is, not to admit, without evident Certainty, any Means that can tend to *dissolve* it, and consequently to reject all Proofs which, in their own Nature, or upon Experience, are found to be uncertain.

In this *Indissolubility* consists the sacred Parallel of the Union between the Husband and Wife; and the Union of *Jesus Christ* with his Church, by his Grace.

The Gospel, which is our Law, teaches us, That before the Time of *Jesus Christ*,
Divorce-

Divorcement was a Way which the *Mosaic* Law had allowed the *Jews*, *ad duritiem cordis, for the Hardness of their Heart*: And it was to put an End to the Abuse of it, that *Jesus Christ* pronounced this contrary Law; *Quod Deus conjunxit, homo non separet; quicumque dimiserit uxorem suam, & aliam duxerit, adulterium committit super eam: Et si uxor dimiserit virum suum, & alium nupsierit, mœchatur.* What God hath joined together, let no Man put asunder: Whosoever shall put away his Wife, and marry another, committeth Adultery against her: And if a Woman shall put away her Husband, and be married to another, she committeth Adultery, *Mark* x. 9, 11, 12.

For the well understanding of the Consequence and Effect of this *Indissolubility*, according to the Intention of the Church, and the Object of our Cause, we must lay down two Principles which cannot be contested.

The *First*, which both Sides agree to, is, That as what is in its Essence *Indissoluble* cannot be *dissolved*, so there can be no proving that a Marriage is *dissolved*, but by supposing for certain, evidently certain, that the Marriage has not *existed*; that there had been a Celebration, but no *Consummation*. For this Reason it is, that in the Actions which are brought against Marriage, they always conclude in a Declaration of the Nullity. It is
a Non-

a *Non-Existence* rather than *Dissolution* of Marriage ; for had there been a Marriage, not all the Power on Earth, no, nor that of the Church it self, can *dissolve* it.

The *second* Principle, which is a necessary Consequence of the *first*, is, that to shew there has been no Marriage, that a Marriage, tho' solemnized, does not exist, there must be a real, certain, evident Fault, either with respect to the Subject, or with respect to the Form, which did obstruct the Effect. The Church and the Laws have declared certain Impediments which cancel a Marriage, as Want of Age in those who are not arrived to Puberty ; want of Consent, or invalid Consent in the Marriage of young Heirs and Minors ; the Default of a proper Priest, &c. But they admit of none of those Impediments, unless made out by certain, evident, and infallible Proof.

Therefore, if *Impotency* be received as a Cause of *Dissolution* of a Christian Marriage, it neither is, nor can be so, in the Intention of the Church, any farther than as it is founded upon certain and evident Proof ; the *Impotency*, in a Word, must be manifested, and brought to Light ; because the Spirit of the Church does not suffer, that the Dignity of the Ceremony, the Condition of Persons whom it has tied together, should depend upon the Event of a lame, ambiguous, or uncertain Proof ;

Proof; and to admit, for a *Dissolution* of *Marriage*, a doubtful or casual Proof, is to destroy or indanger the *Indissolubility* of the Charge pronounced by *Jesus Christ*.

These Principles pre-supposed, in order to make a discreet Judgment of the said Proofs, as to their Utility or Inutility, their Use or Abuse, let us examine the Discipline of the Church in *two* different Periods of Time.

The *first*, during the twelve first Ages, wherein the Church (at least the *Romish* Church) took no Cognizance of Accusations for *Impotency*.

The *second*, beginning at the 13th Century; since when the Church has, by little and little, admitted such Complaints, and accepted the different Proofs thereof, as shall be hereafter explain'd.

In these two different Periods, tho' the Discipline has vary'd, the Doctrine has ever been the same. Discipline, which is the Work of Men, set over the Church to govern it, is alterable for prudential Reasons, according to the Difference of Circumstances of Time and Place; but the Doctrine, which is deriv'd to the Church from *Jesus Christ*, is as unvariable as its Author, and depends neither on Time nor Place; thus *Marriage*, since its institution by *Jesus Christ*, has always been

in-

indissoluble in the *second* Period as well as in the *first*; it is so still, and ever will be so.

By this Immutability of Doctrine we shall reconcile both Periods, and see that these Changes in Discipline, instead of contradicting our System, will serve to confirm it.

In the *first* Ages, when the Ecclesiastical Discipline, being nearer its Source, was the more pure, there were *Impotents*, as there have been since: What Answer did the Church in those Days give to troublesome Wives, who complain'd of their Husband's *Insufficiency*; or to the Husbands, who accused their Wives thereof? She gave them, for Decision, the Law she had received from *Jesus Christ*, the same Law which *Jesus Christ* had pronounced to the *Jews*; *Quod Deus conjunxit, homo non separet. What God hath joined, let no Man put asunder.* Persuaded of the Danger of the Consequences, she held for a Rule, that the public Welfare of the Church was preferable to the particular Interest of a complaining Wife; and that it was less inconvenient to let alone the Marriage of *one* IMPO-
TENT, than to expose the Marriages of *many* to the Hazard of a false Accusation, and the Uncertainty of its Proofs. See more on this Head, in our *Appendix* N^o. II.



APPENDIX.

NUMB. I.

THE

INVALIDITY

Of an Un-consummated

MARRIAGE.





APPENDIX.

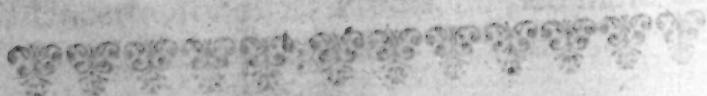
NUMBER

THE

INVALIDITY

Of an Uncontaminated

MARRIAGE.





THE C A S E.



GEORGE DOWNING,
*without the Knowledge and
Consent of his Father (then
alive, but accounted not of
sound Judgment) was, at the
Age of fifteen, An. 1701, by the
Procurement and Persuasion of those, in whose
Keeping he was, marry'd, according to the
Church Form, to MARY FORESTER of the
Age of Thirteen.*

II. *This young Couple was put to Bed, in
the Day Time, according to Custom, and
continued there a little while, but in the
Presence of the Company, who all testify
they touch'd not One the Other; and after
that, they came together no more; the young
Gentleman going immediately Abroad, the
young Woman continuing with her Parents.*

III. GEORGE DOWNING, *after three or four Years Travel, return'd Home to England, and being sollicitd to live with his lawful Wife, refus'd it, and frequently and publickly declar'd, he never would compleat the Marriage.*

IV. *Fourteen Years have pass'd since this Marriage Ceremony was perform'd ; and each Party having (as is natural to think) contracted an incurable Aversion to each the other, is very desirous to be set at Liberty ; and accordingly Application is made to the Legislative Power, to dissolve this Marriage, and to give each Party Leave, if they think fit, to marry elsewhere.*

On Tuesday May 5, 1715, this CASE was brought to a Hearing before the *House of Peers*, who after a strenuous Debate of near three Hours long, gave their Determination against it, and rejected the Petition ; being only carried by a Majority of two Voices, *Noes 49. Yeas 47.*

The Reasons against such Dissolution, are,

First, That each Party was consenting to the Marriage, and was old enough to give such Consent, according to the known Laws of the Kingdom ; the Male being fifteen Years old, the Female thirteen ; whereas the Years of Consent are, by Law, fourteen and twelve.

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Secondly, They were actually marry'd according to the Form prescribed by the *Church of England*; the Minister pronouncing those solemn Words used by our Saviour, *Those whom God hath joined, let no Man put asunder*. They are therefore Man and Wife both by the Laws of God and of the Land; and since nothing but *Adultery* can dissolve a Marriage, and no *Adultery* is pretended here, the Marriage continues indissoluble.

The following PLEA was drawn up on this Occasion, by Dr. *Fleetwood*, late Bishop of *Ely*, and from hence we hope it will be seen, that something more than *Common Pity*, was due to this *Unfortunate Pair*.

The PLEA.

My LORDS,

I Intreat you to favour me, whilst I speak a few Words to the *Bill* that is now brought before you, notwithstanding what I hear whisper'd about by the People who stand near me, that this is a Matter proper to the *Clergy*, and that we are to acquiesce in the Judgment and Opinion of my Lords the *Bishops*, who are agreed that such a Marriage as this is not to be dissolv'd. My Lords, the Bishops them-

themselves are (under Favour) not agreed upon this Matter, altho' the Majority of the present Ones is, as I hear, against the Dissolution of this Marriage: But, were they all here, and all unanimous in the Point, would that be a binding Argument? I am a little asham'd to hear *Laymen* say, that Cases of this Nature fall not properly under their Cognizance and Consideration, but are to be decided by the Clergy only. There are no such Difficulties in the Case before us, as I apprehend it; it is what we may all of us understand, and, I believe, we most of us do: And to defer and yield entirely to *Authority*, where we are able to hear Reason, and to judge; is a Submission that is no more due, than, I dare say, it is expected by that venerable Bench. I will therefore, with your Lordships Indulgence, speak my Mind in this Matter freely.

I hear it is said, my Lords, that a Marriage which was once good and valid, is for ever after that *indissoluble*, unless in the Case of *Adultery*. I wonder, by the Way, how they came to except *the Case of Adultery*; for tho' our Blessed Saviour has excepted *the Case of Adultery*, yet the Stream of Authority, the Generality of those Great Men, whom we call the *Fathers* of the *Latin Church*, together with
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the Rabble of *Schoolmen* and *Commentators*, have almost to a Man, deny'd the innocent Party the Liberty of marrying again, altho' divorc'd from an adulterous Partner; and I would fain know, how much a *Divorce* is worth above Six-pence, without leave to marry again, if the injur'd Party pleases? But I only mention this, to let your Lordships see, whither the Reverence of Authority alone, and great Names, may carry those, who will be led tamely by them, and will not use the Reason and good Sense which God has given them.

I ask your Lordships Pardon for this Digression, and come to the Point. A Marriage, we are told, is good, where the Parties concern'd were at Age and Liberty to consent, and actually consented, and were actually marry'd by the Form prescrib'd in the Book of *Common-Prayer*. And such a Marriage, we are also told, is *indissoluble* by the Law of God. I will not waste the least of your Lordships Time in needless Cavils, but take it for granted, that the Man now concerned was fifteen Years of Age, and the Woman thirteen, which are Years of Consent by the Laws of the Land, and that they were actually marry'd by the prescrib'd Form. But I deny that the Marriage is therefore *indissoluble* by the Legislative Power

Power of the Land, and that for many Reasons.

My Lords, the Years of Consent are not fix'd to fourteen or twelve, either by *Nature, Reason, or any Law of God*; but purely and meerly by the positive Laws of the Land, which may change them to morrow; and if they were chang'd to day, no Man in *England* would, I dare affirm it, be dissatisfy'd; it seems so senseless and unreasonable to give our Children the Power of disposing of their *Persons* for ever, at an Age when we will not let them dispose of five Shillings without Direction and Advice. But I insist not upon that at present; the Law is already made, and I consider it as such; but still it is but a *Human Law*, and the same Power which determines it to bind in the *general*, may, if it seem fitting, determine it not to bind in this, or any such *particular* Case; and that without Offence either to God or Man. The Laws indeed must fix upon a certain Time, or otherwise the Subject will want Direction, and a Rule to go by. And let us take it for granted now, that the Time fix'd by the Laws is a reasonable and fitting Time for ninety nine People in a hundred; yet if the hundredth Person be aggrieved to Death, or worse than Death, by such a Law, what is the Impediment, what the Danger,

Danger, what the Mischief, of declaring the hundredth Person not to be bound by that Law? If it were possible for human Wisdom to foresee all the Inconveniences and Mischiefs that can arise, would not the Legislative Power provide a Remedy for all? Would it not make its Rules as comprehensive as it could, so that they might comprise and take in all Cases and Persons possible? But this we find was never done, nor ever will be done: No Foresight is sufficient for all Accidents : But there is room for After-thought; and a Power to cure the Evils which it could not prevent, because it could not foresee, is lodg'd in every Government. 'Tis to that Power we have now Recourse: We pray Relief against a Law, which however just and fitting it may be thought in itself, and beneficial to others, binds *Us* to nothing but Misery; and truly *kills*, according to the Letter. The Man and Woman were *at Age*, according to the Law, but wanted that Maturity and Forwardness of Age, which the Law supposes and requires in People of twelve and fourteen, when it makes them capable of marrying at those Years. They gave *Consent* indeed with their Tongues, and pronounc'd the solemn Words, by which they mutually deliver'd up themselves each to the other; that is, they did as they were bid to do,

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and

and said just as the Parents and Priest commanded them to say. But where was the Consent of Heart? Where was the Knowledge and Understanding that is requisite to the forming a Resolution of this Nature, and to the making such a solemn Contract? My Lords, the Children were entirely passive in the Matter, and very obedient to the Orders of those that govern'd them; and would have given away their Fortunes and their Liberties, and every Thing they had, had they been bid to do so, in the same Manner. I may affirm, because I have taken great Pains to be inform'd of the Truth, that this young Couple came together to contract, and to consent to Marriage, without so much as the Desire or Appetite of being marry'd; without so much as knowing what it was they were to bargain and contract for: They consented to give the Use and the Dominion of their Bodies each to the other, as long as they both should live, without so much as understanding what they meant when they said so; without so much as an Ability of making good their Promises and Engagements.

This, my Lords, is the *Consent* this Couple of young and thoughtless Creatures gave; and this Consent the Church it seems insists upon. The solemn Promise was pronounc'd in solemn Manner by the Priest,
and

and the Children were bid to *say after him*, and said after him, and then the Knot was ty'd, that nothing can loose but Death. Is there any Thing in the World so like a *Charm* as this? My Lords, there is not any Contract in the World but may be utterly dissolv'd, by the free Consent of Parties, if without Prejudice to any Third. I like a Horse that is in any Man's Possession, and he likes the Price I offer for it; we thereupon agree, and pass our Words each to the other: His Promise then gives me a Right to the Horse, and my Promise gives him a Right to the Price agreed upon. But in a little Time we each of us bethink our selves, and each dislikes the Bargain he has made, and each agrees to set the other at his Liberty: I have not us'd your Horse, nor have you gotten my Money. Here the Contract is utterly dissolv'd by the Consent of Parties, and no third Man is hurt thereby. Will any Man say that we have done amiss? Will any one say that we have so much as broken our Word each to the other? The Word I gave to him was to secure his Bargain; the Word he gave to me was to secure mine. If he dislikes the Bargain, he gives me (as it were) my Word again; and so do I to him, and then we are again at Liberty. My Lords, If we should carry the Mat-

ter farther yet, and to secure the Bargain we seem at first so fond of, should give our *Oath* to each other, in Presence of a great Company, and with what Solemnity besides you will, yet I affirm, (and so do all the *Casuits* in the World, as I am told by those who know) I say, my Lords, that I affirm, that if in this Case, after this solemn Oath, we should both of us freely consent to break this Agreement off, and no Body else be hurt thereby, we should neither of us be guilty of Perjury, or Breach of *Oath*. Our Oaths were given to each the other, to secure the Promises that were made; and if we, each of us see Reason to consent, and freely do consent, to release each other of his Promise, the Oath can lay no farther Obligation on us. I promised, and I swore I would perform that Promise to him; he did the same to me; but neither of us, after some Time, car'd, or requir'd, to have such Promise made good to him; our Oaths must therefore follow the Nature of our Promises; and when the Promise is releas'd, the Oath is so also. It may be we both of us did amiss, in calling God to Witness, (as in an Oath Men are presum'd to) in an Affair of so light Moment; I will not dispute that now, but I maintain that such an Oath obliges not, if the Promise, for whose Security the
Oath

Oath was given, be mutually releas'd, and no Body hurt thereby. My Lords, I appeal to those who understand these Matters, whether what I say be not true.

Whence is it then, that the *Marriage-Contract* should be *indissoluble*, when all other Contracts, tho' confirm'd with solemn Oaths, may be dissolv'd, if the contracting Persons agree to such a Dissolution, and no third Person suffers by it? How comes a Promise of this Nature to differ from all other Promises whatever? Oh, say the *Po-pish* Casuists, it is because this same Matrimony is a great *Sacrament*. No, say the *Protestant* Divines with us, it is no Sacrament, but it is the Ordinance of God, instituted in Paradise, in the Time of Man's Innocence, and signifies to us the mystical Union that is betwixt Christ and his Church; and the Promise is made with all Solemnity, in the Presence of God, in the Church, before the Priest and all the Company, and confirm'd with the Words of Christ: And therefore a Consent and Promise made in such a solemn Manner can never be retracted or dissolv'd.

My Lords, I intend not to say one Word against the Dignity of Marriage. But I do not think that the Solemnity of *Words*, of *Place*, and *Company*, in which a Contract is made, adds any Strength or
Virtue

Virtue to such Contract, or makes it more obliging.

A Man indeed will certainly be more *asham'd* to break a Promise made at Church, and before a great Company, than he will be to break such a Promise made to his Friend alone, at his own House. But is he more oblig'd in Conscience to keep his *publick* Promise than his *private* one? Will any honest Man say that? The Obligation therefore does not arise from the Solemnity of *Words*, and *Place*, and *Company*, but from the free and voluntary Promise which a Man makes, and the Right he thereby gives to another. The Scandal also and Offence that is given and taken by a Breach of Promise, made in solemn Manner, is indeed greater, than is occasion'd by the Breach of a Promise made in private: But the Reason of that is, because more People know of it; for if the same People were assur'd that such a Promise was indeed made, altho' in private, they would as certainly condemn the Breach of it, as they would, had it been made before them all; and they would be as much scandaliz'd at such a Breach, as if they had been Witnesses to the making the Promise: Which is a Proof that a Man's Obligation to keep his Promise arises from *his having freely made it*, and not from his having made it.

it in such a *Place*, and before such a *Company*, and in such a particular *Form of Words*.

The first Marriage that ever was made, was made without any Words at all, that we know of, expressing their Consent; and it was so *clandestine*, that there was not so much as a mortal Man by, no not a *Priest*, to join them together: But God who made them, brought the Woman to the Man, and instructed them by Reason and natural Principles, that they were made each for the other. There was Consent of Heart, and Union of Affections. But I insist not upon the Example; it is too singular to be a Rule. Years of Age are necessary; and Consent, in express Words, mutually given and taken, is necessary to make a Marriage-Contract good and valid.

This is the Ordinance of God, this is of Divine Appointment, that one Man and one Woman should freely and knowingly give Consent to be each others, to all the Ends and Purposes of Matrimony, as long as they both should live, and should not be allow'd to give themselves to any one's Use besides.

And all that Christ added (if indeed he added any thing, or did any more than revive it) to this Original Institution was, that when either of the Parties brake their Contract by Adultery, the innocent
Party

Party was at Liberty to separate from the faulty one, and marry another, if it were thought fitting. Since therefore all that is absolutely necessary to the making a Marriage-Contract, is, that a Male and Female, who are at Age, and Liberty to consent, should actually consent to give the Use and Dominion each of their Bodies, to the other; and, exclusive of all others, to live together faithfully till Death parted them: Since this is so, I do affirm, that *Caius* and *Caia*, two *Heathens*, giving their Consent, in the Manner above-mention'd, in their Father's Parlour, are Man and Wife *according to God's Ordinance*; their Marriage is as true, as good, and as innocent a Marriage, in the Sight of God, as the Marriage of a *Jew* and *Jewess*, tho' both in Covenant with God, made before the High-Priest himself, with all the Ceremonies you can imagine, and in what Form of Words you will, before a hundred Witnesses, and at the Altar in the Temple of *Jerusalem*.

I am, my Lords, so satisfy'd of the Truth of what I say, that I go on to say, with all Assurance, that the Marriage-Contract of this *Caius* and *Caia* was as good, as binding, and as innocent as the Marriage-Contract of any Lord in this Assembly, tho' solemniz'd in the Church of *St. Paul's*, according to the establish'd Form
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in the *Common-Prayer*, by his Grace my Lord Archbishop of *Canterbury* himself, repeating those most sacred Words of Christ, *Those whom God hath join'd, let no Man put asunder.* And I aver, that God did as surely join *Caius* and *Caia*, when they consented to become Husband and Wife for Life, as he has join'd any Couple else for these seventeen hundred and fifteen Years. So that I hope, my Lords, you will not suffer your Eyes to be dazzled with the Pomp and Glitter of great Words, and awful Sounds, which fly before good Sense, and vanish when you come to look into the Reason of Things.

Caius and *Caia* must express their Consent in *Words* and *Signs* appointed by the Laws of their Country; and must be married by the *Persons* set apart for such Service, according to the Rites and Ceremonies of their Religion: So must the *Jewish Pair*, according to theirs; and so must *Christians* also. But there is something common to them all; and that in which they all unite must needs be that which makes the Marriage-Contract valid and obliging. And what is that, but that a Male and Female should be at Age to consent, and at liberty to consent, to give to each the other the Use and Dominion of each other's Body,

dy, exclusively to all the World besides, as long as they both shall live?

This is properly the Marriage-Contract, and common to all Nations and Religions; and all beyond this, is Matter of Ceremony, Decency and Prudence; and order'd by the Legislative Powers of different Countries, as they see convenient. And I do not so much as pretend to dispute the Force and Obligation of these Laws, to such as are subject to these different Powers: They are, and may, and must be binding as to the Dowries of the Wives, and the Legitimation of Children, and their inheriting Estates and Honours, and in all such like Cases.

My Lords, so much has been said in favour of the Solemnity of *Words*, of *Place*, and *Persons*, which are, in truth, but *Circumstances* to a Marriage-Contract, that it has made me spend so much of your Time, to try to lay aside that Prejudice, and to consider the present Contract in itself. We were not of Age sufficient for Consent, altho' we were of Age according to the Letter of the Law. We gave our Consent to be marry'd, but it was not the Consent of Understanding, for we knew not what it was that Marriage meant. We repeated very solemn Words, after the Priest, as we were bidden; but it was but the Labour of the Lips; the Heart *did* not,

not, the Heart indeed *could not* go along with them: For whether we take the Heart for *Knowledge*, or *Desire*, there was no *Heart* concern'd in all this Matter: We neither of us knew the Nature of the Contract we were making; we neither of us had so much as the Desire of doing what that Contract both supposes and requires. And now, my Lords, we humbly hope you will not let us be *at Age*, only to do ourselves irreparable Mischief; nor call that a *Consent*, which is to compleat our Ruin, and which can serve no other End.

We do not deny ourselves to have been at *legal Age*; we do not deny that we have given a *verbal Consent*; but we deny ourselves to have been at Years of Understanding, to give such a Consent as is reasonable and fitting in a Matter of such Importance. And we appeal to your Lordships Equity, whether this Age and this Consent shall stand good to our Undoing, and to the Advantage of no Creature in the World besides: For who, my Lords, will be the worse for setting us at Liberty, or who will be the better for our being bound? I am exceedingly sensible, that I have trespass'd much upon your Lordships Patience, but I am bound in Justice and in Conscience to beg a little more of it, to speak a Word or two to the last

Part of the Objection, That since the Parties before you, in Petition, are Man and Wife both by the Laws of God and of the Land; and since by the Laws of God nothing but Adultery can dissolve a Marriage, and no Adultery is pretended here, the Marriage of Consequence continues indissoluble.

To save your Lordships Time, I will grant every thing that can be granted; I grant, that by the Laws of God, nothing can dissolve a compleat Marriage but Adultery; and I grant, that no Adultery is pretended in this Case; but I deny that this Marriage before you, is therefore *indissoluble*, because I must and do deny the Marriage before you to be a *compleat* Marriage, by the Laws of God: And, I hope, with your Lordships Favour and Indulgence, to shew it is not a compleat Marriage, because it never was *consummated*.

The Love and the Desire that Men and Women have of each other, is what is implanted in the Hearts of all of them, by God himself who made them; and is therefore as innocent an Appetite as any else they have; and it has (as every other Appetite) its proper Satisfaction provided for it by the good Creator: And when it fixes on its proper Object, is satisfy'd as innocently, as the Desire of Meat, or Drink, or Sleep can be. Marriage, my Lords, is
fixing

fixing the Desire upon its proper Object: And this Desire is never to be satisfy'd with Innocence, but in the Marriage-Bed. The End of Marriage therefore is the Satisfaction of this Appetite. This is the End and Purpose of God in making them Male and Female; this is the Way, the only Way, of their becoming *one Flesh*: And therefore till the End is answer'd, where it can be answer'd, Marriage is not perfect and compleat. God cannot properly be said to have join'd those together, who never join'd themselves together, in the natural Way, of his Appointment: And therefore, under Favour, 'tis a great Misapplication of those sacred Words, to the Case before us, where the two Parties never *came together* in the Sense intended by those Words.

What can be plainer than this Proposition?

The End of Marriage, by God's Institution, is, that two should become one *Flesh*.

The Two before you in the Bill were never yet *One Flesh*. Your Lordships will make the Conclusion.

Those whom God has join'd let no Man put asunder.

The Two before you in the Bill were never yet conjoin'd by God, in the true Meaning of those Words; they may therefore

fore as yet be put asunder by *Men*; as I hope they will by your Lordships.

My Lords, the Easiness of granting a Divorce in Cases of *Impotence*, is a good Proof that Marriage is not compleat and perfect where the Ends of it are not to be obtain'd; nay, 'tis a Proof that it was no Marriage, but a *Nullity* from the Beginning, altho' the Parties were at *full Age*, altho' they gave a *free Consent*, and were marry'd with all Formalities; altho' the Priest pronounc'd them Man and Wife *in the Name of the Father, Son, and Holy Ghost*, and said those sacred Words over their Heads, *Those whom God has join'd, let no Man put asunder*, they were not Man and Wife, because they could not become *one Flesh*: They were not join'd by God, because they could not join themselves together. Your Lordships will consider therefore whether a Marriage not consummated (nor ever like to be consummated) be a compleat Marriage in God's Sight; so compleat, I mean, as to be *indissoluble*. I shall be told, I know, that in the Case before us, there is now no Defect of *Power*, no *Impotence* or *Inability* to compleat the Marriage pretended, but want of *Will*.

I own it, and I only use the Instance to shew that a Marriage not consummated, is not *indissoluble* by the Laws of God;
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and that *an utter Aversion* to the Consummation of Marriage, in both Parties, is as good a Reason for a Divorce, as an Inability in *one Party*, which never fails of procuring a Divorce. In the one Case, the Parties are each of them untouch'd, pure and unfully'd even in Thought; whilst in the other, there must pass such Things, as I have neither *Will* nor *Leave* to mention; and yet a Divorce follows of Course. My Lords, if ever we had *come together* in this Manner, I had not had one Word to reply on this Occasion; all I have said of our *Want of Age* would have signify'd nothing; all I have said of our giving *no Consent* had been said to no Purpose; had Consummation follow'd any Time within these fourteen Years, we must not have appear'd in this Place. But when, to our Want of Age, and Want of Knowledge to consent to Marriage, we can also add, that we have never come together to compleat this Marriage, and that we are as pure from each the other, as we were when born, we humbly hope your Lordships will deliver us from the Chains which the Laws of our Country only have bound us with.

'Tis said, my Lords, that Consummation is not necessary to compleat a Marriage, because a Man is Master of the Woman's Fortune, and the Woman has

a Right to her Dowry, altho' the Man or Woman should chance to die before the Nuptial-Bed were made ready. My Lords, I grant, that when the Parties who were at Age, and Liberty, have given their consent, and the Priest has done his Work, according to the Form prescrib'd, the *Law* is satisfy'd, and looks no farther; and gives each Party a Right to all the Advantages agreed upon, tho' Consummation follow not: The Laws suppose that what is reasonable and fitting will follow, and only secures *legal Advantages* that are contracted for. The other is a Point of Duty and of Conscience. I only ask whether there be a Man or Woman in the World, who thinks that the End of Marriage, as it is God's Ordinance, is fully answer'd, till it be consummated? My Lords, we come not here to say that a Marriage is not a *legal Marriage* 'till Consummation; nor to assign a *Day*, or a *Week*, or a *Month*, for such Completion: We presume not to trifle in that manner in such an Assembly as this. We only mean to say, that a Marriage not consummated, is *dissoluble*, without Offence to any Law of God; and that a Marriage of that Kind is not a compleat Marriage *in his Sight*; the full Purpose of *his Institution* is not answer'd till they become *one Flesh*. All that goes before is previously necessary to the making
such

such Conjunction innocent, but it is not what is mainly and principally intended by him *who made them Male and Female*. And therefore 'tis but an Impertinence to tell us that *Adam* and *Eve* were compleatly marry'd before they went into the *Bridal-Bower*: 'Tis so with every honest Couple, as well as with our first Parents: But would they have been compleatly marry'd had they never gone into that *Bridal-Bower* at all, and liv'd for many Years? What Marriage, I pray, would that have been? They might have been good *Company* and good *Friends*, but they could no more have been said to be *Man and Wife*, with respect to what God intended by Marriage, than *two Men*, or *two Women*, living together in *Unity* and *Amity*, may be said to be *marry'd together*. I believe it would puzzle the Doctors to prove that *Adam* and *Eve* were ever marry'd at all, any otherwise than by a mutual Consent to go together; for there was no consent of any *Superior* to ask or obtain; and there could be no need of promising to be faithful to each other, for there was no *Body* else to go to. I wonder such an Instance should be pitch'd upon.

But now, my Lords, I come to the great Argument of all which is brought to prove a Marriage *compleat*, tho' its
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Effect never follow; and that is, that *Joseph* and the *Blessed Virgin* were, and are often call'd, in the Holy Scripture, *Man and Wife*, altho' we are sure by Scriptures they never came together till the Holy Child was born; and, by *Tradition*, sure they never came together after it was born.

This Example I take to be the Ground and Bottom of all those absurd Doctrines and Propositions that are rais'd in maintaining a Marriage to be compleat by the Consent of Parties, and the Benediction of the Priest, without any other Fruit or Effect. *Joseph* and the *Blessed Virgin* were certainly espous'd and betroth'd each to the other; and he thereby became so much *her Husband*, that he thought of putting her away, which shews he thought she was *his Wife*: And he is call'd *her Husband* by the Evangelist Saint *Matthew*; and she herself calls *Joseph* the Father of her Son, *Thy Father and I have sought thee sorrowing*: And a little before they are call'd *his Parents*. There is not a Word of all this that I either do, or dare deny. Be pleas'd, my Lords, but to remember and observe, that the same Scriptures that call *Joseph* the *Husband* of the *Blessed Virgin*, do also call *Joseph* the *Father* of *her Son*; and the same Scriptures that call *Joseph* and *Mary Husband and Wife*, do also call

Joseph

Joseph and *Mary* the *Parents* of *Jesus*. And he was in truth as much the *Husband* of the *Virgin* as he was the *Father* of her Son; and much in the same Sense, and to the same Purpose. My Lords, I have taken some Pains to understand this Matter, and what I am going to say I have from very good Authority, living as well as dead, for it is something out of the Way of my Profession. It was absolutely necessary, by God's Appointment, that the Saviour of the World should be *born of a Woman*: And it was, by the same Appointment, full as necessary that he should not be the *Son of Man*, in the common Way. To reconcile these Difficulties therefore, he was *conceiv'd by the Holy Ghost*, and *born of the Virgin Mary*. But because this Saviour of the World was to be, in especial manner, the *Messiah* of the *Jews*, he was to be born a *Jew*; to descend from *Abraham*, according to the Promise, of the Tribe of *Juda*, of the House and Lineage of *David*. This *Messiah* the *Jews* expected should be born as other Men were born; and they would never have receiv'd him as such, or heard him as a Prophet and Teacher sent from God, unless they had believ'd him to be born in *lawful Wedlock*; as they certainly did, or else you would have heard of it over and over in the Gospels, which conceal none of the

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Slanders,

Slanders, Contumelies and Reproaches, which the *Jews*, upon all Occasions, did so plentifully pour upon our Saviour. Had the Blessed *Mary* not been *marry'd*, what would the People have said of her? What would they not have said of her and of her Son? It was therefore absolutely necessary to the *Jews* receiving Christ for the *Messiah*, and hearkening to him, that he should be born under the Reputation of *Marriage*; which could not be unless she took a *Husband* in the usual Manner. You see what Entertainment both his Person and Doctrine found, altho' he was suppos'd to be born in Wedlock, and of honest Parents, only because of their mean and low Condition; but what had been his Fortune, had they thought him *spurious*?

I am almost sorry I have Occasion to speak of these Matters; and I restrain myself from going on, in hopes that enough is said to shew, that the Marriage of *Joseph* with the *Blessed Virgin* was all (as I am told the antient Christian Writers call it) *according to Oeconomy*. It was to save Appearances; to cover both the Mother and the Son from the Reproaches of ignorant malicious People, till it should please God, in his own good Time, to manifest the Truth more clearly to the World; and therefore tho' it might be wrapp'd in Prophecies before his Birth, yet it

it was not till after his Death that it became an Article of Faith, that he was *conceiv'd by the Holy Ghost*, and *born of the Virgin Mary*. During the Life of Christ, *Joseph* was the *suppos'd Husband* of the Blessed Virgin, and the *suppos'd Father* of her Blessed Son: and, under the Cover of that Relation, was to take upon him, under God, the Care and Protection of them both.

Will any Man, after this, pretend to say that this was a *compleat Marriage*, as Marriage is the Ordinance of God? It was compleat to all the Ends and Purposes that God intended by it: It screen'd the Mother and the Son from Blame and Slander; and it provided for them such a Defence and Maintenance as was convenient. But what is this to God's Original Institution? Or how can such a thing be drawn into Example? *Joseph* and *Mary* are said to be marry'd, altho' they never *did* compleat that Marriage, altho' they never *must* compleat it, therefore a Marriage-Contract is a Compleat Marriage in any one else as well as them, altho' they proceed no farther! That is, (I humbly pray your Lordships to observe) there was a Marriage-Contract made, about some 1715 Years ago, betwixt a Holy Man and the most excellent and Holy Maid that ever liv'd upon the Earth; plac'd in such Circumstances

as

as never happen'd before, nor ever will happen again ; and this Couple, by God's Appointment, never were to touch each other, in the matrimonial Way, till the Birth of a Child, that was *to be call'd* (because he truly was) *the Son of God*. Now this most rare, most singular, most unexampl'd Instance, is brought to convince your Lordships, that a bare Marriage-Contract makes a compleat Marriage, according to the Laws of God, without proceeding any farther, in every other Couple that is marry'd: And the Parties, for whom I now appear, are said to be *compleatly marry'd*, altho' they never came together, because the *Blessed Virgin* and *Joseph* were compleatly marry'd, altho' they went no farther than a Marriage-Contract, nor ever *could go* farther, by God's Appointment. My Lords, if such an Example as this can operate so extensively and strangely, we must give over making Consequences in the way of Reasons, and attend to the Dictates of our Spiritual Masters, without examining what it is they say. I do not know what Form of Words the *Jews* made use of when they were marry'd; but I know, methinks, that the Form prescrib'd by the *Church of England* would have been very odd, improper, and absurd, to have been us'd to that Blessed Couple, when it describes the

Ends

Ends of Matrimony to be, *First*, For the Procreation of Children; *Secondly*, For a Remedy against Sin; and, *Thirdly*, For mutual Society, Help and Comfort, that the one ought to have of the other. The Sum of all this is, that the Ends of *this particular Marriage*, which God intend- ed, were fully answer'd by a *Marriage-Contract only*; but the Ends of Marriage *in general*, as it is God's Ordinance, nei- ther were, nor might be answer'd by such Contract only; and therefore 'tis an ab- surd unreasonable Thing to argue from the Compleatness of the one, to the Com- pletness of any other, that *may* proceed farther, and that *ought* to proceed farther, and is certainly not compleat till it *does* proceed farther.

Another Argument to prove a Marriage to be compleat, by a Marriage-Contract only, without proceeding to Consumma- tion, is fetch'd from the Law of *Moses*, *Deut. xxii. 23.* where a Woman, betroth'd or espous'd to a Man, is to be stoned to Death, as an Adulteress, if she admit an- other to her Bed; which shews that the Validity of Marriage proceeds from the mutual Covenant and Consent that two have given to be each others.

My Lords, I yield to every Word of this, and to whatever else can be said of the same Kind. A Marriage-Contract does certain-

certainly give a Right to every Thing contracted for. As soon as we are marry'd, I have a Right to her *Person*, a Right to her *Fortune*, a Right to her *Reputation*; and if any one injure her in any of those Particulars, I have a Right to her *Vindication*; for she is really mine, and I am hers: And I own I am as much marry'd to her the first Morning, and she to me, as I shall be the Morning or Week after, as to all the Ends and Purposes which human Laws can propose, or take any Cognizance of. And if she abuses any one the Hour after she is marry'd, 'tis I must answer for it. If she gives away any of her Goods, which are now become mine, why no Body can receive them; I shall recover them, for they are mine. And if she give away herself, (though I have never yet come near her) she is certainly an *Adulteress*; she has given away what was mine, and broken her Faith and Contract, and is liable to whatever Penalty the Laws of the Country think fit to inflict upon such Offenders. I could moreover answer this Law of *Moses*, by another Law of the same *Moses*, which sets a Man at Liberty from a Maid he was betroth'd to, if she please him not when the Time of Marriage comes. 'Tis in *Exod. xxi. 8*. And the only Difference is, that the Maid betrothed in *Exodus* was not

not *free*, but a *Servant*; the Maid betrothed in *Deuteronomy* was a *free Woman*. But tho' this makes a great Difference in the Laws and Customs of a Country, yet certainly 'tis none in Point of Conscience: The Obligation there, is alike to *Bond* as *Free*, if other Circumstances make no Difference. But the answering one Objection with another clears up nothing. I own that the Validity of Marriage proceeds from the mutual Covenant. But pray what is this mutual Covenant? Is it not the consenting and agreeing of a Man and Woman to give to each other the Use and Dominion of their Bodies, exclusive of all the World besides, as long as they both shall live? What is it that Parties *contract* for? What is it People *consent to* upon these Occasions? I know it is said by Father *Ambrose*, *Connubium non facit Deffloratio Virginitatis, sed Pactio conjugalis*. And it was said before him long by Father *Ulpian*, *Nuptias non Concubitus sed Consensus facit*. And certainly every Body will say after them, that the Agreement of a Man and Woman to lie together, does not make a *Marriage*. But will St. *Ambrose* tell us, that a *Pactio conjugalis* (a *Marriage-Covenant*) can be fully answer'd without *Concumbency*, if the Parties live and are not hinder'd? In truth

I will not answer for the *Father*, who (as the rest of them) had *Joseph* and *Mary* always in his Eye: But I will answer for the *Civil Lawyer*, who, I am sure, would never say a *Marriage* was compleat, that was not, if it could have been, consummated. Hear what *Modestinus* says, *Nuptiæ sunt Conjunctio Maris & Fæminæ, & Consortium omnis Vitæ*. 'Tis true, he was a *Heathen Lawyer*, but had he also added, that *Marriage* was ordain'd to be a *Remedy against Sin*, he had talk'd the Language of our *Common-Prayer-Book*. For he says it is for the Procreation of Children, (*Conjunctio Maris & Fæminæ*) and for mutual Society, Help, and Comfort, that the one ought to have of the other, and taking each other *for better for worse*, which is but the *English* of *Consortium omnis Vitæ*. *Paulus*, another *Civilian*, says, that *Nuptiæ consistere non possunt nisi consentiant omnes; i. e. Qui coeunt, quorumque in Potestate sunt*. There is no such Thing as a *right Marriage*, where there is not the Consent of all Parties; *i. e.* the Consent of the two, *qui coeunt*, and the Consent of Parents, or Guardians, in whose Power and Disposal the young Ones were. All Writers in the World agree, that *Consent, Covenant, Contract* (call it what you will) is so necessary to a *Marriage*, that it cannot

not be valid without it; but then they also say, that such a Consent is a Consent to answer the Ends of *Marriage*; that such a Covenant is a Covenant to live together according to God's Ordinance; and that such a Contract is a Contract for the Use and Dominion of each others Body; which is, in Effect, neither more nor less than what St. Paul has said in 1 Cor. vii. 3. and 4, which I repeat not, because it is so well known. But they who think a *Marriage* is a *complete* and *perfect Marriage*, according to God's Ordinance, (for as to *human positive Laws*, I contest it not) altho' it never be consummated; they I desire may read that Passage, and consider it.

My Lords, there is another slight Objection, which I will but just mention, and that is, That the Church allows the *oldest People* that are, to be marry'd, and accounts their *Marriage* good, altho' there is neither Hope nor Likelihood of having Children; and accordingly appoints the Prayer for that Purpose to be omitted and left out: And therefore a *Marriage* is complete by *Contract only*, without any Consummation.

The Argument, I think, is, this, That because a *Marriage* is a *good Marriage* which is *not* consummated, because it *can-*

not be by Reason of People's Age, therefore a *Marriage* is a *good Marriage*, tho' not consummated, which yet *may be* consummated any Day in the Year. If this be a right Inference, there is no making a wrong one, for one can never make a worse. My Lords, the Church neither does nor can pretend to determine when People are too old to *marry*: It meddles with no such Matters, but leaves every one to their Discretion. She seems to assign three Ends of *Marriage*, which I have had occasion to mention before; and if the *first* cannot be answer'd, the *second* may, and so may the *third*, tho' the other two should not.

And now, my Lords, I hope I have shewn that the *Bill* before you is a *good Bill*; that the *Divorce* we sue for is very *reasonable* and *just*, and that such a *Marriage* as *ours*, made at such an Age, with such a Consent as is indeed no Consent, and never consummated, tho' fourteen Years since, is such a *Marriage* as may very innocently be dissolv'd without any manner of Offence to the Laws of God. And I desire any Man to assign any one Law of God that would be hurt thereby, unless we are made to believe, that every *Law of the Church* is also a *Law of God*; which when I hear affirm'd, I shall
not

not want an Answer to it. But I am sure the Laws of God, which are properly so call'd, are to be found in a *Holy Book*, where nothing appears against us. For as for those Passages, which allow a Man to put away his Wife for no Cause but that of *Adultery*; 'tis certain to a Demonstration, that they refer to *Marriages* that have been *completed* and *consummated* by Man and Wife. And if your Lordships would indulge me so far, I would venture to say, that no Man of common Sense, can read those Passages and think otherwise. My Lords, he must be a *Scholar*, that can read that Question of the *Pharisee's*; and the Determination of our Blessed Saviour, about *Divorces*, and conclude after all, that the *Marriages* there spoken of, might be such *Marriages* as never were consummated, as well as such as were. 'Tis impossible to mistake so plain a Case, without a good deal of Learning and Study. My Lords, it stirs me to a little Indignation, and gives me a Concern somewhat beyond my *Fee*, to hear this *Marriage-Contrast* of ours treated like a *Marriage* of fourteen Years Standing, where Man and Wife have all along cohabited, and now are weary of each other, and of the common Bed, and seeking to your Lordships for leave to look for more agreeable Companions. Why
 else

else are all these Places of *Scripture*
 brought against *our Bill*, when not a single
 Line of them is pertinent and proper to
our Case? If they had brought the *Scrip-
 tures* to prove, that a Boy of fifteen and
 a Girl of thirteen, not born in *Paradise*,
 or in the Gardens of the *East*, but in a
 cold and frozen Climate of the *North*,
 were of Age sufficient to dispose of their
 Persons for ever, they had done something
 to the Purpose; for that, my Lords, was
our Age. If they had brought the *Scrip-
 tures* to prove, that a Boy and Girl, of
 the Years aforesaid, repeating a certain
Form of Words, after a certain Person,
 in a Church, between the Hours of eight
 and twelve, had thereby made a Contract
 that must stand like *Fate*, and be irre-
 vocable as the Hours that pass'd a Week
 ago, by any Power on Earth, they had
 done something to the Purpose, for that
 indeed we did. I have already own'd, we
 said what we were bid to say; we did
 what we were bid to do: We should have
 done a great deal more, and said a great
 deal more, had we been order'd so: 'Tis
 not our Fault, that we did not give it
 under our Hands, that our *Marriage* was
consummated by the Words we repeated in
 the Church; had we been ask'd to do so,
 we surely had done it, such was our In-
 nocence

nocence, such was our Ignorance! This, my Lords, had been the Point they should have labour'd most to clear; for this they should have brought their *Scripture* Proofs, to shew that the *Words* of a *Marriage-Contract*, are, by God's Appointment, as soon as ever they are utter'd, of so binding a Nature, that neither the Consent of Parties, nor all the Powers that are on Earth, can make them *null* and *void*: That it is proper and peculiar to this *Contract* never to be dissolv'd, tho' nothing but Words has pass'd. All other *Promises*, I must say again, all other *Covenants*, all other *Oaths*, are own'd to be *dissoluble* by the Consent of Parties, where no Injury is done to any Third. The *Marriage-Words*, it seems, are the only Words in the World that operate like a *Charm*, and take Effect, in Spite of all the Reason, and all the new Necessities, that can arise, and be urg'd against it, altho' the Parties should not have so much as touch'd each other's Lips, nor ever shall. Here *Scriptures* would have done exceedingly well, and have obtain'd the Reverence and Obedience that is due to their Authority, had they but shewn, that a *verbal Contract*, made with Solemnity, answers all the Ends and Purposes of *Matrimony*, as it is God's Ordinance; that it is not
only

only previously necessary, both by the Laws of God and Man, to make the Conjunction of Man and Woman innocent; but that the *verbal Contract* is the Thing *itself*, 'tis *Matrimony* to all intents and Purposes; and is no more to be dissolv'd than it had been, had the Fruit and Effect of it been half a Dozen Children, now presented at your Lordships Bar. There is no End of the Absurdities that arise from treating a *verbal Contract*, that has only pass'd the Lips, just as you would a *Marriage consummated*, and perfectly compleat; and therefore, tho' I call for their *Scripture-Proofs*, yet I am well assur'd, none can be brought to prove a Point so unreasonable. But to hear them heap up *Scripture* upon *Scripture*, to prove, that *Marriage* is *God's Ordinance*; that *Marriages* are *sacred Contracts*; that by the Laws of Christ they cannot be dissolv'd but for the Cause of Fornication; is, in my humble Opinion, to hear them say nothing to the Purpose, unless those *Scriptures* mean, that *Marriage not Consummated* is God's Ordinance; that *Marriage-Contracts* are sacred, altho' the very *End* and *Meaning* of the Contract is not answer'd; and that *Marriages* which Christ there speaks of as *indissoluble* (except for the sake of *Adultery*) are such *Marriages*

as never were consummated. In short, if because the Word *Marriage* is a Word that is common to a Marriage *before* it is consummated, and also *after*, therefore whatever is applicable to a consummated Marriage, is also applicable to a Marriage not consummated; if this be a Consequence, a reasonable Man will be asham'd hereafter of making Consequences. We may as well conclude, that because *Caius* is a Man, and *Titius* is a Man, therefore *Caius* and *Titius* are one and the same Man. They tell us also, from the *Scriptures*, that *Matrimony* signifies to us, the *mystical Union* there is betwixt Christ and his Church; but let them say it, if they think fit, that *Matrimony not consummated* does, or *can* signify this *Union*: But in this I spare them, and indeed myself, not daring to speak with any freedom on this Subject; and finding I have already transgress'd too far, I humbly desire your Lordships to consider, whether there ever was so equitable a Cause of *Divorce* within the Walls of this House. It is so singular a Case, that it cuts off all your Fears of it becoming an *Example*: The oldest Lawyer living never heard the like in all Respects; nor will the youngest ever live to see it made a Precedent: But were there twenty such like Cases now before you, they

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are so *reasonable* and *just*, that they would every one deserve to be reliev'd by your Lordships; and 'tis below the Dignity of the Legislative Power to be afraid of making Precedents, where there is *Reason*, and *Justice*, and *Compassion* on their Side. To all which we lay as strong a Claim, as ever Parties did that ever were before this *House*.



NUMB.



NUMB. II.

*Concerning the Proofs of IMPO-
TENCY: That there are no real
natural Marks of VIRGINITY,
and that all the pretended ones
may be effected by ART.*



IN the CASE before us, the
Fact, in short, is this :

A Marriage has been cele-
brated by the Church between
Persons who Petition to be
separated for *Impotency*, it therefore lies
upon the Complainant to prove, *mani-
festis & certissimis documentis*, by manifest
and indubitable Evidences, according to
Canon LI. of the IVth Lateran Council
under *Innocent III.* that, the *Impotency*
complained of is true, real, natural, and
perpetual. This Proposition I presume
will be allowed to be incontestible.

Zachias, in *Decis. Rotæ* 54. N° 7. *Cum
agitur de dirimendo matrimonio, probationes
debent esse concludentissimæ, —nec Rota at-
tendit præsumptiones & conjecturas.* “ In a

“ Trial for *dissolving a Marriage*, the
 “ Proofs ought to be most conclusive,—
 “ the Court does not regard Presumptions
 “ and Guesſes.”

According to the Summary of Chap. *Accepisti*, and according to *Hostiensis*, it is necessary, that *indubitato modo convincatur impotentia*, “ Impotence be proved in the
 “ clearest Manner.”

Sanichus, in Schola Canonica, Edit. 2. Anno 1692, Tom. 1. p. 228. c. 2. No. 1. Impedimentum Impotentiae debet evidenti probatione & signo doceri. “ The Case of
 “ Impotence ought to be made appear by
 “ evident Signs and Proofs.”

And for this Reason the Judgments of the Church, according to the Decretals, and generally according to the Canonists and Theologists, are only provisional: *Cum appareat ex post facto Ecclesiam fuisse deceptam.* Gloss. in cap. *Accepisti*. “ If
 “ it shall appear afterwards that the
 “ Church was impos'd on.”

Dominicus Soto, in 4 Dist. 34. A. 2. a Divine of the Council of Trent, *Quomodo-
 documque separantur conjuges, si postea ex-
 perimento comperitur, illum qui inhabilis
 judicatus est, habilem esse, remigrare ad pri-
 mum debet Matrimonium:* “ However mar-
 “ ried Persons may be separated, if it ap-
 “ pear afterwards that he who was judg'd
 “ im-

“ impotent becomes capable, he ought to
 “ return to his first Marriage.”

The Custom of *France* does not admit such provisional, conditional Judgments; and its Maxim, *Res judicata pro veritate habetur*, “ A Matter adjudg’d, ought to
 “ be held for *Truth*,” obliges it with stronger Reasons not to pronounce Marriages null upon account of *Impotency*, but upon most certain and indubitable Proofs, *manifestis & certissimis documentis*.

The Question therefore ought now to be only this, Whether the *Visitation* of the *Wife*, supposing she be declared a *Virgin*, is a certain and indubitable Proof of the *Impotency* of the *Husband*? because its being doubtful, is enough to cause it to be rejected, according to all the Doctors.

Zachias, in *Decis. Rotæ in Caus. dissol. Matrimonii Taurin*, decides, that this Proof is fallacious: *Puella ab obstetricibus reperta fuit virgo; sed hujusmodi judicium est fallax*: “ A young Woman was found a *Virgin*
 “ by the *Midwives*; but this kind of
 “ Proof is uncertain.” He quotes *Hosliensis*, *Abbas*, and *Lopes*; and says, That, without regard to a Report in the *Wife*’s Favour, the *Rota* confirm’d the Marriage, and rejected the *Wife*’s Suit.

Certainly the Inspection of the *Wife* neither decides for or against the *Husband*’s Ability: It did not decide for it in the Af-
 fair

fair of the Marquis de *Langey*; for notwithstanding that his Wife, who had accus'd him of *Impotency*, was not, in the Inspection of her Person, found a Virgin, yet her Marriage was declar'd null: The Visitation of the Wife therefore can prove nothing as to the Ability of the Husband. There are a thousand Ways of losing the Marks of Virginity, without having to do with a Man; there are, in like manner, a thousand Ways of recovering them again, when it has been really lost by having to do with a Man, as shall be made appear; and consequently *Virginity* may not be admitted as a Proof of the Husband's *Insufficiency*.

And, indeed, nothing is more uncertain, than inspecting the *Wife*, to know whether she be a *Virgin* or no.

In three Theses of the Faculty of Physic at *Paris*, it has been determin'd, *Nulla dantur Virginitatis signa*.

In the Time of St. *Cyprian*, the World was persuaded of this, *Nam & manus & oculi obstetricum sæpe falluntur*: "The Hands and Eyes of Midwives are often deceiv'd." And even before that Time: *Nec aliqua putet hac se excusatione posse defendi quod inspicere possit*. "Let none think to defend her self, by saying, she is willing to be inspected." He therefore rejects this Proof, as defective.

St.

St. Ambrose, in *Ep. ad Syagrium* 5. 1. class. *Novæ Edit.* says, that the ancientest and most knowing Physicians and Surgeons were of Opinion, that *Virginity* could not possibly be known. *Archiatri dicunt, non satis liquido comprehendi inspectionis fidem, & ipsis Medicinæ vetustis Doctoribus id sententiæ fuisse.* “ The greatest Physicians say, there is no trusting to Inspection; and this was the Opinion of the oldest of their Faculty.”

This same Saint speaking of such Women, as petition to be inspected, says, that they are most to be doubted of. *Plus dubitandum de ea quæ inspiciendam se præbuerit, quàm de ea quæ non fuerit inspecta.*

St. Augustin, in *civit. Dei, Lib. 1. c. 18.* *Obstetrix virginis cujusdam integritatem manu velut explorans sive malevolentia, sive inscitia, sive casu, dum inspexit perdidit.* “ A Midwife, examining the Integrity of a Woman, may make a false Report thro’ Ill-will, or Ignorance, or some Accident.”

Let not therefore any one tell us, with a romantic Air, that the Inspection of Wives (as a certain Proof of their Husband’s *Impotency*, in Case they are found to be Virgins) is a Proof that has been admitted in all Times; since no Inspection can be instanc’d, but of young unmarried-

married Women, that had been accus'd of violating their Vow of Virginity; and such Inspections as the Holy Fathers have condemned for being defective and uncertain Proofs.

Some have talk'd of 1500 Years Antiquity; but have not been able to cite so much as one Decretal; for the only one, namely, that of *Proposuiti*, which was made towards the End of the 12th Century, is absolutely unmaintainable; and whoever would go about to make use of it, as an Authority, must shut his Eyes to the Sun at Noon-day, and say it is Night.

With what Front can such Men advance, that the Inspection of Wives has been admitted, in all Times, and in all Ages, as a Proof of their Husband's *Insufficiency*? when it is a granted Point, that during the first six Centuries, the Church knew nothing of *Impotency's* being an Impediment; and since these Men have been convinc'd, that to those six Centuries must be added six more; and since there is not any one Decretal throughout the whole Title *de frigidis*, that does order the Inspection of the Wife, as a Proof of the Ability or Inability of the Husband.

Zachias, in lib. iv. Tit. 2. q. 1. n. 14. *There are not* (says he) *any certain Marks*
of

of Virginitie, to know whether it has been violated or no: This, adds he, is the Sentiment of all the Physicians and Surgeons that have lately written; *acceptissima est hæc conclusio recentioribus omnibus*: He cites *Jubart. lib. 5. of Vulgar Errors, c. 4. Parreius, l. de Renunciatione. Augenius ep. l. 1. c. 2. Fortunatus fidel. l. 3. de relat. medic. c. 1. Condrocius in methodo testificat. c. 11. Naucelius in Analogia, lib. 7. part. 3. problemat. 5. Ulaius in Uteribus mulieribus, c. 6. Vallis de sacra Philosophia, c. 25. Vincentius Alsatius de quæsitis per epistolas, centur. 4*; "and several other very Learned Physicians (adds Zachias) which I could name;" and among the Lawyers, *Cujas 17. observat. c. 20. reported by Sanchez, l. 7. disp. 113. num. 10.*

Cypræus de sponsalibus, cap. 13. sect. 51. Omnium Doctorum judicio sæpe manus & oculi fallunt, & indicia virginitatis à certitudine absunt, quòd hæc signa facile imitari, & mentiri fæminæ possint, & viris fucum facere. "It is the Opinion of all the Doctors, that the Hands and Eyes are often deceiv'd, and that the Signs of Virginitie are far from being certain, because Women can easily imitate and counterfeit them, and so impose upon their Husbands."

Other Physicians, Surgeons, and Anatomists: *Delaurens* a famous Anatomist, *lib. 7. q. 13. p. 366.* of the *Hymen*, and the Marks of Virginity, assures us, that he is convinc'd, by a great many Experiments, that there is no such Membrane as the *Hymen* is describ'd to be; and that if such a one is found, it is not *in the Institution of Nature*; that thus we must look out for other Marks of Virginity, and he knows of none.

Diemerbroeck, l. 1. c. 26. p. 149. relates the Doubts of *Oribasius, Soranus, Fernelius,* and *Du Laurens*; and concludes, that there is no certain Rule whereby to judge whether a Woman has lost her Virginity or no. They furthermore cite *Galen, Bartholomæus, Eustachius, de Graaf, Riolan, Plempius, Fabricius, Henry Minichen, Verrheien,* and, of late, *Lami, Rhosne, Dionis, Mauriceau, and Devaux*, who all affirm, that there is no certain Mark of Virginity.

Lami, in his Anatomical Discourses, 2d Edit. p. 184. One can hardly ever certainly know that a Woman is not a Virgin, unless she has had a Child, or has been too much debauch'd.

Rhosne, a famous Physician, Professor at *Lipswick*, in his Treatise of the Duty of a Physician, in the publick Reports printed in 1704, says, That the Difficulty of the Deposition proceeds from the Uncertainty

certainty of the Signs: *It is difficult, for Example, says he, to know whether a young Woman has lost her Virginity, because Virginity has no certain Marks, by which it may be certainly known.*

Dionis, in his Anatomy of Man demonstrated at the Garden-Royal, Demonstration 4. p. 275, rejects the Hymen, it not being a Mark of Virginity; and if there is any such, says he, 'tis a very narrow Opening, pinch'd in by the Carunculi Myrtiformes; he adds, that there are young Women, who are so narrow, that they cannot have to do with Man without great Pain; and pag. 276, he adds, that the internal Orifice of the Matrix shuts itself, after Coition, so very close, that the minutest Thing cannot enter; and p. 277, the Neck, as well as the internal Orifice shuts itself again, post coitum.

Mauriceau, in his Treatise of the Distempers of Women, c. 6. No Women, be they of what Age they will, have any Mark whereby their Virginity may be guess'd, besides the Carunculi Myrtiformes, which make the Neck of the Matrix more narrow; I say, guess'd and not known; for often the Windings and Traces of the Vulva are as hard to know, as that of those three Things mention'd in Scripture.

Devaux, Provost of the Company of Surgeons at Paris, in his Book of the Art

of making Reports in Surgery, printed in 1703, c. 20. p. 420. *Among all the Marks which Authors have given of Virginity, there is not one absolutely certain and indubitable:* He afterwards confutes Severin, Pineau, and all the others that say there are Signs of Virginity, and concludes, p. 429. *That the most certain Signs to judge of the Virtue of the Sex being of so little Certainty, as they really are, for the Reasons which have been alledg'd, the Judges of Contests upon so nice a Point, ought to follow the Advice of Subisius; and Chap. 21. p. 432. The Signs of Virginity are very obscure and very equivocal.*

Solomon himself places *Virginity* among the things that cannot be discover'd: According to the *Hebrew Text*, *Viam viri in virgine, vel in adolescentula; The Way of a Man with a Maid;* as the best Commentators, as well antient as modern, have understood that Text.

Cypræus, before cited, assures us, that it is the unanimous Opinion of all the Doctors of Physic (*Omnium Doctorum judicio*) that there are no certain Signs of Virginity.

De Reïes Francus Medicus. L. Cui Titulus: Elysius jucundarum quæstionum campus. q. 39. num. 29. also says, that 'tis the Opinion of all the Physicians; conclusio omnium Medicorum votis confirmata; signum

signum scilicet virginitatis nullum certum proprium dari, quibus & nos assentimur;

“ That there can be no proper, infallible “ Proof of Virginitv; to which we also “ agree. ” He afterwards rejects all the pretended Signs of *Virginitv*, which he calls Follies and Trifles, *nugæ*; and concludes, that the Visitation of the Wife cannot produce the least Probability before the Judges: *Nec illa inspectio aliquid probabile apud judices convincit.*

The Doctors of Law have the same Thought of Virginitv: *Cujacius*, upon Chap. *Proposuisti*, and in *Lib. 17.* of his Observations, c, 27. *Tagereau*, c. 4. *Hotman*, c, 3. *Boierius*, upon Chap. *Continebatur*: *Hosliensis* in his Sum. Fol. 23, *Venice* Edition; *Fevret* of Abuse, c. 14. In *Anne Robert*, the Advocate of a Woman, who accus'd her Husband of *Impotency*, agrees, that *incerta & periculosa est visitationum fides*; “ the Result of Visitations “ is uncertain and hazardous; ” and it is this Uncertainty that caus'd the Ordination of the Congress.

The most skilful Doctors, Theologists, or Casuists, are of the same Opinion. We may see *Sanchez*, who quotes one *Fragosus*, a Physician, whom we have not reckon'd among those quoted above.

Pontius, who has the most learnedly written concerning Marriage, l. 7. c. 66.
num.

num. 2. *fallax est inspectio an virgo sit.*
 The Eyes and Hands are deceiv'd in it:
 num. 8. *Si mulier asserat se incognitam,*
vir autem affirmet, & alias non sunt aliae
probationes convincentes, credendum est viri
juramento juxta cap. Si quis, and Chap. i.
de frigidis: Neque vero obstabit quamvis
mulier exhibeat se inspiciendam, & incor-
rupta appareat, cum ea inspectio fallax om-
nino sit, ac possit faemina in odium viri fa-
cile se virginem ementiri: " If the Wife
 " denies Consummation, and the Husband
 " asserts it, and there be no other con-
 " vincing Proofs, the Husband's Oath shall
 " be taken, according to the Chapter *Si*
 " *quis*: And that notwithstanding the
 " Wife offers her self to be inspected, and
 " appears entire; since Inspection cannot
 " at all be depended on, it being in the
 " Power of a Wife who hates her Hus-
 " band, to counterfeit Virginity. " The
 Visitation of the Wife can conclude
 nothing in her Favour.

Ibid. num. 4. The same Theologist
 says, that Chap. *Accepisti* cannot be re-
 concil'd with Chap. *Laudabilem*; but by
 saying, that the Complaints of the Wife
 ought not to be hearkn'd to, unless she
 complain'd within the first six Months of
 her Marriage, and address'd herself to the
 Bishop, or to his Official.

Gomitulus,

Comitolus, one of the most generally approv'd Casuists, in his *Moral-Answers*, l. i. q. 113. rejects the Visitation of the Wife, as infamous, and as being incapable of furnishing any Proof. The Thing, says he, having been thus decided in his Time, by the whole University of *Padua*: *Inspectio virginis vana est & turpis: inutilis & vana, quia qui eam adjicit putat dari certa signa virginitatis, cum ea non dari superioribus annis in frequenti cœtu Medicorum Philosophorum Academiæ Patavinæ persubtili inter eos Doctores habita disputatione constitutum sit; turpis, quia totius familiæ nomen & splendor fœdaretur.* " The Inspection of a Virgin is both impertinent and scandalous: Impertinent, because it is presum'd it can discover certain Signs of Virginitie; whereas it has been nicely disputed and resolved of late Years in a great Assembly of Physicians and Philosophers of the University of *Padua*, that there are no such Signs; and scandalous, because it leaves a Blot upon the Name and Honour of the whole Family.

It is not true that this Author afterwards retracts what we just now read, " The Case he decides, is of a Man, who had engag'd himself to marry a young Woman, upon Condition she was a Virgin; and he concludes with the Authors

“ thors he cites, that he is oblig’d to marry
 “ her, if she can prove her Virginity,
 “ *sine crimine & ejus infamia:*” Thus the
 Question is not concerning *Virginity*,
 as a Proof of the *Impotency* of her
 Husband.

M. de S. Beave, a very skilful Doctor
 in Morality, Case 83. Tome 1. of his
 Resolutions, printed after his Death: *What*
I say of the Visitation of the Wife, and the
Congress, [The Congress was performing the
Act of Generation in the Presence of Ec-
 clestialtical Courts, but this obscene Custom
 was abolish’d in France, Ann. 1677.] It
 is my Opinion, in which I am so well fix’d,
 that I do not think it in the Power of a
 Judge to act contrary to it, and to support
 upon two Proofs, as uncertain as they are
 shameful and indecent, a Judgment in De-
 claration of Nullity of Marriage — It
 cannot be judg’d by the Inspection (of the
 Wife) whether the Marriage has been con-
 summated or no.

Besides, the Physicians and Canonists
 agree, that there are a great many made-
 Virginities, and that *in iis plurima fiunt*
commenta: They bring a hundred Ex-
 amples of this.

Ambrose Pareius relates, that a Woman,
 at the 2d Time of her being with Child,
 had so contracted her Parts by Astringents,
 that

that they were forc'd to make an Incision, to deliver her of her second Child.

Riolanus: That at *Paris* he saw a Woman brought to Bed, who was so streight, that the Point of a Lancet could not enter.

Henry Minichen: That a young Woman was brought to Bed, whose Parts could not admit so much as a Pea.

Rèies, citing *Nicole*, says, that the Matrons having deliver'd a Woman, made her so streight, that she was no longer in a Condition to suffer the Company of any Man; and he quotes from *Pineus*, that a young Woman, who had had a Child before she was married, had so streighten'd herself, that her Husband swore he found her a Virgin. Finally, he condemns *Augenius*, for having given the Particulars of those astringent Remedies: *Quæ enim* says he, *nefas scire, nescire necesse est*: "It is our Duty to be ignorant of things unlawful to be known."

Cypræus: *hæc signa imitari & mentiri fæminæ, & viris fucum facere possunt*; "Women can easily imitate and counterfeit these Signs, and so impose upon Men."

Zachias, in the Place before-mention'd, says, that it is easy so to contract the Parts by Astringents, that the most profligate Strumpet may pass for a Virgin: *Facile est per medicamenta aded genitalia fæminea*
h
restringi

restringi posse, ut corruptissimum & subagitatissimum scortum virginem præ se ferat:

“ It is easy for Women’s natural Parts to
 “ be so contracted by Medicaments, that
 “ the most debauch’d Prostitute may pass
 “ for a Maid .”

The Example cited by *Hosliensis*, an Official, and learned Casuist, would alone be sufficient to confirm this Truth: *Fuit in Pedemonte quædam Domina, Caratalla nomine, quæ instrumentum suum adeò coarctavit, quod & viro & omnibus aliis, inhabilis fuit facta; nec postea potuit adjuvari per aliquem medicum:* “ There was in
 “ Piedmont a certain Lady, Caratalla by
 “ Name, who had so contracted those
 “ Parts, as to be absolutely impenetrable;
 “ neither could the Physicians afford her
 “ any Help. ”

St. Ambrose, in the afore-cited Epistle, has the same Thought, and expresses it with a great deal of Energy: *Facilius est ut refutet quod nunquam fecerit, quàm quod fecerit.*

It is says he, more easy for a Woman to make her self seem a Virgin, when she is not; than to make herself seem deflower’d, when she really is.

Pontius, above-cited, affirms the same Thing of factitious Virginities.

In

* In short, no Body is ignorant, that Nature is perpetually at work, especially in young People, to repair the Solutions of Continuity.

For this Reason, independent of the Uncertainty of Inspection, a Husband is concern'd to oppose the Search of his Wife, especially if they have been separated for a Year; during which Time, both Nature and Art may have been endeavouring at a Reparation; besides that, the Ignorance and Covetousness of Matrons, have in all Times made the Truth of their Reports very questionable.

It is notorious, what is said thereof in the Poet Ovid, *Post aliquot lucas, ita cuncta premuntur & apta in sese reducunt. Quid? cum res juvatur: nam rimam fota stringunt fucisque coercent.*

Prophane History, and even Fable, shews us how offensive the Discovering of a Woman's Nudities were to the Beholder; and of this we have an Example in the purchasing of Slaves. Seneca speaks thereof with Indignation: *Nuda stetit in litore ad fastidium emptoris, omnes corporis partes &*

* Mauriceau, above-quoted, says, *the internal Orifice of the Matrix shuts itself again post coitum*: which is an Answer to what Begon erroneously asserts, that Astringents can only close the exterior Surface.

inspectæ & contrectatæ sunt. “ She was
 “ exposed naked on the Shore, enough to
 “ make the Buyer loath her. All Parts
 “ of her Body were seen and touch’d.

* The Roman Law, both old and new, concurs in exempting Wives from Visitation, even tho’ it related to their Marriage; and this, because they would not violate their Honour! Ought our Laws to make more free with the Sex’s Modesty?

† We have already quoted three Canons in Chap. *de Droit*, which, at least, import, that the Husband must be believ’d, when he swears he has consummated; and it is plain from *Pontius, lib. 7. c. 63. num. 5.* that this is the Sentiment of the Canonists, *Innocent, in c. 1. prima parte, num. 4. John Andreas, num. 9. Butreius, num. 35. Versu quodocunque probant de Restitutione spoliatorum. Abbas, in c. 1. num. 3. de clandest. desponsat. Panormitanus c. 1. num. 3. de clandest. nupt. Rota apud Farinassium, vol. 2. concil. decis. III. & decis. 112. num. 6.*

Dominicus Soto, a Divine of the Council of *Trent*, whom Mr. *Pitbou* refers to, as having very learnedly treated of this

* Justinian: *quod in feminis etiam antiquis impudicum visus est.*

† These Chapters are, *Si quis, Accepisti, and Continebatur.*

Mat-

Matter, that even *Condormition* alone makes it impossible to prove *Non-consummation*.

* *Si autem maneant in eodem thoro ut conjuges, negativa pars Consummationis probari neutiquam potest.* “ If they lodge in the “ same Bed as married Persons, it is im- “ possible to prove there was no Con- “ summation.”

The Gloss upon Chap. *Si quis: Quia fuit sola cum solo, creditur cognita ab ipso.*

As to the Visitation of Wives, a great Number of Theologists, Canonists, Physicians, Surgeons, Anatomists, and even the most enlighten'd Fathers of the Church, St. Cyprian, St. Ambrose, St. Augustin, reject this Proof as scandalous, erroneous, and, at least, uncertain.

Are our wisest Theologists, and our best approv'd Casuists, to be look'd upon as Visionaries? while a self-conceited *Sciolist* must pass for an Angel drop'd from Heaven, to persuade us what 'till now was never believ'd, namely, that *inspecting* the Wife, is a certain Proof of the Husband's *Impotency*; all the Doctors in Theology, in Law, in Physic, having look'd upon it as altogether uncertain, and the most defective of all Proofs, and never as an absolute and perpetual Proof of the Husband's *Impotency*; common Sense

* *Im. 4. sent. de 34. qu. 1. art. 2.*

is enough to enable any one to conceive, that such *Inspection* of the Wife may not be admitted for a Proof of her Virginity : *nimis vincere invidiosum.*

Let the Rhetorick of such Pedants display it self ever so much, they will never convince the Publick of the Efficacy of that Proof.

In short, *Dominicus Soto* concludes, that the Judges ought to make use of their utmost Circumspection, and not to separate married People ; but to confirm their nuptial Ties, when they meet with nothing but uncertain and doubtful Proofs of Impotency. *Quocirca adhibenda est maxima prudentia judicis, & re dubiâ proferenda est sententia in favorem matrimonii ne dirimatur, alioqui fraudibus & dolis sterneretur via.*

If *Soto* has been speaking of absolute and unconditional Judgments, such as admitted of no Return to the *Nuptial Bed* ; what Certainty and what demonstrative Proofs would he not have insisted on, before he would have pronounc'd a *Marriage null*, on account of *Impotency*.



N U M B. III.

The Chapter Fraternitatis of Innocent III. Anno 1212.

FRaternitatis tuæ Literas accepimus continentes quod O. mulier cuidam viro matrimonialiter nupsit, cum quo per multos annos morata, non potuit carnaliter ab ipso cognosci: licet autem per Archipresbyterum tuum super hoc fuisses edoctus; tamen tu volens certitudinem habere pleniorē, quasdam matronas suæ parochiæ providas & honestas ad tuam præsentiam evocasti, districtè illis injungens sub periculo

WE have received the Letter of our Brother, containing an Account of a Woman who was married to a certain Person O. with whom she co-habited for many Years, but could not be known carnally by him: And that though you were informed of this by your Arch-Presbyter, yet being willing to receive a fuller Certainty of the Case, you convened certain discreet and honourable Matrons before you, and strictly en-

ani-

animarum ut mulierem ipsam prudenter inspicerent, utrum idonea esset ad viriles amplexus; quæ tandem in fide sua tibi asseruerunt constanter quod eadem nunquam poterat esse mater aut conjux, tanquam cui naturale deerat instrumentum. Unde inter ipsam & virum divortium celebrasti, mulierem inducens ut ad religionem aliquam se transferret perpetuam continentiam servatura; & viro licentiam tribuisti ut uxorem duceret, quia patrem fieri cupiebat. Contigit autem postea, quod mulier invenit qui seras hujusmodi referavit, & abiciens continentiam quam promisit, G. Latori præsentium supernupsit. Quamvis i-

join'd them, at the Peril of their Souls, to inspect and examine the Woman carefully, to know if she were capable of Coition; who at length affirmed solemnly, upon their Reputation, that the said Person could never be either a Mother, or a Wife, as wanting the Organs of Generation. Upon which you issued a Divorce between her and her Husband; persuading the Woman to enter into some Religious House to preserve a perpetual Chastity; and gave the Man Liberty to marry another Wife, because he desired to become a Father. But it afterwards happened, that the Woman met with one who opened those Locks of Na-
gitur

gitur semiplenè nobis
 expresseris, quomodo
 dicta mulier se promi-
 serit continentiam ser-
 vaturam, utrum vide-
 licet simplici verbo an
 voto solemnì, utrumve
 ad religionem transierit,
 ut promisit, an contra
 promissionem suam in
 domo remanserit; &
 qualiter feras illius fe-
 cerit referari, utrum vi-
 delicet artificio medici,
 an concubitu viri, seu
 alio quolibet modo; nos
 tamen perspicaciter at-
 tendentes, quòd impedi-
 mentum illud non erat
 perpetuum, quod præ-
 ter divinum miraculum
 per opus humanum abs-
 que corporali periculo
 potuit removeri, sen-
 tentiam divortii per er-
 rorem probabilem no-
 vimus esse prolatam,
 cum pateat ex post fac-
 to, quod ipsa cognosci-
 bilis erat cujus simili
 commiscetur: & ideo
 inter ipsam & primum

*opened those Locks
 of Nature, and she
 without any Re-
 gard to the Conti-
 nence she had pro-
 mised, married a-
 nother person G.
 Altho' therefore you
 have not fully ex-
 pressed your self to
 us in what manner
 the aforesaid Wo-
 man promised to
 preserve her Cha-
 stity, whether by
 her Word, or by a
 Vow, whether she
 did enter into any
 Religious House, as
 she had promised,
 or whether she staid
 at Home contrary
 to her Promise; as
 likewise in what
 manner those Locks
 of Nature were o-
 pened, whether by
 the Art of a Phy-
 sician, or by Coition
 with a Man; yet
 we carefully ob-
 serving, that the*
 virum

virum dicimus matrimonium extitisse; quare inter eam & præfatum Guil. matrimonium non esse censemus, eosque præcipimus ab invicem separari. Et si prædicta mulier ad religionem transierit, sicut asserit promississe, & primus vir non cognovit eandem, cum ea remaneat, cum qua postmodum autoritate Ecclesiæ contraxit: alioquin illâ dimissâ debet ad illam redire cum qua primò contraxit, nisi se voto mulier illa constrinxerit ad continentiam servandam, ut intelligatur per hoc cum præfato Guil. fornicata fuisse, vel sese fornicario modo alii viro miscuerit, ut primus vir prætextu fornicationis ejus velit consortium declinare: Nam si tantùm simplici verbo promisit se continentiam servaturam, & postea in conspectu Ec-

Impediment was not perpetual, that it was removable without a Miracle by a human Power, and without Danger to the Patient; know that the Sentence of Divorce was pronounced by a probable Error, since it appears, by an After-Act, that she was capable of being known; and therefore we pronounce that there was a Marriage between her and the first Man; and accordingly we think that there is no Marriage between her and the last Person, and therefore command that they be separated. And if the fore-said Woman will enter into a religious Life, as she says she is engaged
 clesiæ

clesiæ nupsit memorato Guil. quamdiu articulus iste dubitabilis erat, præsumi non debet quod fornicaretur cum illo; sed modo non debet aliquatenus cum illo remanere. Per hæc autem quæstionem illam noveris esse solutam, qua quæritur utrum ea quæ adeo arcta est, ut nulli possit carnaliter commisceri, nisi per incisionem aut alio simili modo violentia inferatur, non solummodo levis, sed fortè tam gravis, ut ex ea mortis periculum teneatur ad matrimonium contrahendum; debet idonea perhiberi. Similiter, quæ viro cui nupserat adeò arcta est, ut nunquam ab eo valeat deflorari; si ab eo per judicium Ecclesiæ separata nubat alteri, cui arcta non sit, & per frequentem usum secundi reddatur etiam

to do, and the first Husband knew her not, let him live with his second Wife; otherwise she that was divorced must return to him again, except she has vow'd continency; that hereby it may appear that she committed Fornication with the other Man, or with some Body else, on which Account the first Husband refuses to live with her. For if she had barely made a Promise of Continency, and afterwards married the second Man while her former Marriage was doubtful, she ought not to be charged with Fornication on that Account: However she must not live with him any longer.

apta primo, utrum ad eum redire debeat,
cum quo prius fœdus inierat conjugale. De
talibus autem non est facilè judicandum,
cùm finale iudicium pendeat ex futuro.



NUMB.



N U M B. IV.

*Depositions taken in the Case of the
Earl of Essex, and the Lady
Howard.*

The Oath taken by the Lady Frances Howard.

THAT since the Earl of *Essex* was Eighteen Years of Age, he and I have for the space of three Years diverse and sundry times lain together in naked Bed all Night. And at sundry of the said Times, the said Earl hath purposely endeavoured and attempted to consummate Marriage with me, and to have carnal Copulation with me for procreation of Children: And I have at such Times, as the said Earl hath attempted so to do, yielded my self willing to the same Purpose. All which notwithstanding, I say and affirm upon my Oath, that the said Earl never had carnal Copulation with me,

FRANCES HOWARD.

NUMB.



N U M B. V.

*Depositions, upon the Articles of the
Libel put in by the Lady Frances
Howard, taken June 2. 1613.*

K *Atharine Finies*, Daughter of *Thomas Lord Clinton*, aged about 18 Years, deposeth, 1st, That she hath known the *Lady Frances* for about a Year and half, and the *Lord Essex* for above a Year.

2dly, That from *Midsummer* last to *All-hollontide*, the *Earl of Essex* and *Lady Frances* remained and kept Company together as Man and Wife; first in the Countess of *Leicester's* House at *Drayton* in *Warwickshire*; and after at the *Earl's* own House at *Chartley* in *Staffordshire*: And that for two of the Nights they lodged at *Drayton*, being on a *Sunday* at Night and on a *Monday* at Night, they, to her Knowledge, lay together in one Chamber; she seeing the *Earl* go into the said Chamber undress'd and ready for Bed; and she verily believes they did lie together in the same Bed those two Nights, for that she knows there was but one Bed in the said Cham-

Chamber. That before *Christmas* last, the said Lady *Frances* lying at *Salisbury House* in the *Strand*, the Earl came thither and went into the Chamber where Lady *Frances* was in Bed, and went to Bed to her, and there was no other Bed in that Chamber; and this Deponent heard the Earl and Lady *Frances* talking together a good part of that Night.

Her Depositions to the Interrogatories administered for the other Side.

3dly, That as to this Cause she favours both Parties equally; that her Conversation is most with the Plaintiff, and that if it were in her Power, she would give the Decision according to Right.

4thly, That she was not compelled, but was made acquainted by some that she should be used as a Witness in this Cause, and had Notice given her when she should come.

NUMB.

NUM B. VI.

*The Deposition of Elizabeth Raye,
the Daughter of William Raye,
of Woodstock in Oxfordshire,
Gent. taken to the Libel: Aged
about 20 Years.*

1st. **T**HAT she has known the Lady *Frances* for above two Years; and the Earl of *Essex* for the same time.

2^{dly}, That she serv'd the Lady *Frances* for above twelve Months, and that shortly after she came to serve her, my Lady went to my Lord *Knowles's* House at *Cawfham* in *Oxfordshire*, where she staid about a Fortnight, and the Lord *Essex* came thither to her, and laid in naked Bed with the said Lady *Frances* divers Nights, as this Deponent hath heard them report that attended the Lady in her Chamber: That the Deponent herself at *Drayton* attending the said Lady in her Chamber, did see them in naked Bed together as Man and Wife for divers Nights; as they did likewise afterwards at *Chartley*, for above a Quarter of a Year, and at *Michaelmas* after that, at *Durham* House in *London*.

Her

*Her Examination to the Interrogatories on
the other side.*

3dly, That she favours both Parties equally; converses with neither of them; and, if in her Power, would have Right take Place.

4th Art. Answers Negatively.

5th Art. That she was requested to come to testify in this Cause, but was not compelled by any Process.

6th Art. Hath heard it reported that the Earl of *Essex* was 22 Years Old in *January* last.

7th and 8th Art. No wise concern this Deponent.





NUMB. VII.

*The Deposition of Frances Britten,
Widow, taken to the Libel.*

1st **T**HAT she is Aged about 55 Years,
and hath known both the Parties
respectively from their Infancy.
2^{dly}, That the Deponent having often-
times Occasion of Business with the Lady
Frances, hath come to her since her Mar-
riage to the Earl, and hath seen the Earl
and her dine and sup together as Man and
Wife: That between *Michaelmas* and *All-
ballontide* was three Years, this Deponent
coming to Lady *Frances's* Lodging at
Hampton-Court early in the Morning, she
was brought into the Bed-chamber, where
she did see them in naked Bed together:
as likewise she did at Lady *Frances's* Lodg-
ing at *White-hall*: That perceiving them
in Bed together, this Deponent stept back,
but the Lady *Catharine Howard* her Sister
being there, called the Deponent in, and
then Lady *Frances* stept out of her Bed and
left the Earl there: That this was on St.
Valentines's-day, for that Lady *Catharine*
told the Earl, that there was a Valentine
for

for him. Cannot depose further, saving that when this Deponent was at *Hampton-Court*, as is before mentioned, after the Earl and Lady *Frances* were risen, the Lady missing a Pendant Ruby that usually hung at a Ring in her Ear, desired this Deponent to look for it in the Bed. That thereupon she and the Lady's Chambermaid turned down the Bed-cloaths, and there they saw the Places where the Earl and Lady had lain, but that there was such a distance between the two Places, and such a Hill between them, that this Deponent is persuaded they did not touch one another that Night.





NUMB. VIII.

The Judgment of Philip Melan-
thon, upon Divorces on Account
of Impotence.

PERSONS who are unfit for con-
 jugal Copulation, are by no means
 Man and Wife, but when the Frigidity
 is made apparent, a Judge may pronounce
 those Persons unmarried. Neither is the
 Divorce then made, because it was never
 a Marriage according to what is said in
Matth. 19. But a Declaration only is
 then made, that others may know, that
 such a Society of two Persons is not a
 Marriage; and that the Person who has
 the Powers of Nature entire, is allowed
 to enter into another lawful and more
 happy Union. But the Laws appoint the
 Time for the Discovery of Frigidity, if
 the Matter is doubtful, and forbid a Se-
 paration for three Years. They give the
 same Decision upon those whose Consti-
 tution is so infeebl'd by Witchcraft or
 Charms, as to be incurable by the Help
 of Physick; if the Success of Medicines
 have

have been tried thro' the Course of three Years together without Effect.

But so great is the Modesty of some Women, as to conceal the Impotence of their Husbands; as the Sister of the learned *Simon Gryneus* declared, that she, after the Death of her first Husband, married again a Virgin Widow, who had been wedded eleven Years to an impotent Husband; neither did she ever discover the Case till after the Death of her Husband. Thus far *Melancthon*, on the Head of Matrimony, which *Pezelius* has inserted in his Explanation of *Melancthon*; and added this Remark to them. Of Impotence, there is one sort natural, and another accidental. The natural is, when by Nature one is incapacitated for conjugal Comixture. Accidental, when he is castrated, or disabled by Witchcraft or Poison. Again, that which arises from evil Arts, either is curable by Medicine, or perpetual. From these Distinctions the Explanation is taken, or the Question, whether and how Impotence is the Cause of a Divorce? For there can be no Marriage between impotent Persons; because the sufficient and final Cause is wanting. For first, the Person potent, was deceived, and married ignorantly an Impotent, and therefore there could be no Consent, which is the efficient Cause of Matrimony. In the second

Second Place, the End of Matrimony is double; one is the Generation of Children, as it is said *increase and multiply*; the other End is the avoidance of promiscuous Mixture; according to that Saying, *Let every one marry to avoid Fornication.* this is *Pezelius's* Explication, in his second Part of his Examination of *Melancthon.*



NUMB.

NUMB. IX.

*The Judgment of Henningius upon
the same CASE.*

INability of Body for the Use of Matrimony is a Cause of Divorce; and Men are sometimes by Charms and evil Arts so disabled, as to be incurable. But there are more Particulars to be examined by the Judge before he gives Sentence of Divorce. First, whether the Impotence was precedent to the Marriage, Secondly, whether it followed it. If it was precedent, the potent Person may be set at Liberty upon Suit for a Divorce, for it was not a Marriage, since they did not lawfully consent; since one of the Parties deceives, the other was mistaken; the Impotent deceives, the Potent mistakes. Therefore since God neither approves of Deceit nor Error, it is not to be said that he join'd them together. Farther, if the Judge shall find by the Proofs that the Inability is incurable, he shall immediately declare that it was not a Marriage; but if there be any
 Hopes

Hopes of Cure, let three Years be appointed, during which Time the Cure must be patiently expected, which if ineffectual, the Judge shall pronounce it was no Marriage.

If the Defect followed after Marriage, and the conjugal Embraces of the Parties, Divorce is by no means allowable; for an accidental Affliction, if without Fault of the Sufferer, is to be patiently born with in Matrimony. If the one was pre-acquainted with the Infirmary of the other before Marriage, let them be compelled to live together, and perform all other mutual good Offices: For the Person conscious of the other's Defect, without doubt designed a Fraud, which Fraud ought not to be of any Advantage to that Party, if he afterwards sue for a Divorce. Thus *Henningius* in his *Treatise of Marriage and Divorce*.

Divorce, for it was not a Marriage, since they did not lawfully consent; since one of the Parties deceives, the other was mistaken: The latter since God's Potent mistakes, therefore since God neither approves of Deceit nor Error, it is not to be said that he join'd them together. Further, if the Judge shall find by the Proceedings that the Party is incurable, he shall pronounce that it was not a Marriage, but that the Party is incurable.





The Second Edition of

SEQUEL

TO THE

CASE

Div. I. 35. C. 21.

OF THE

II. The Case of ALEXANDER POPE.

Honourable Mrs. WELD,



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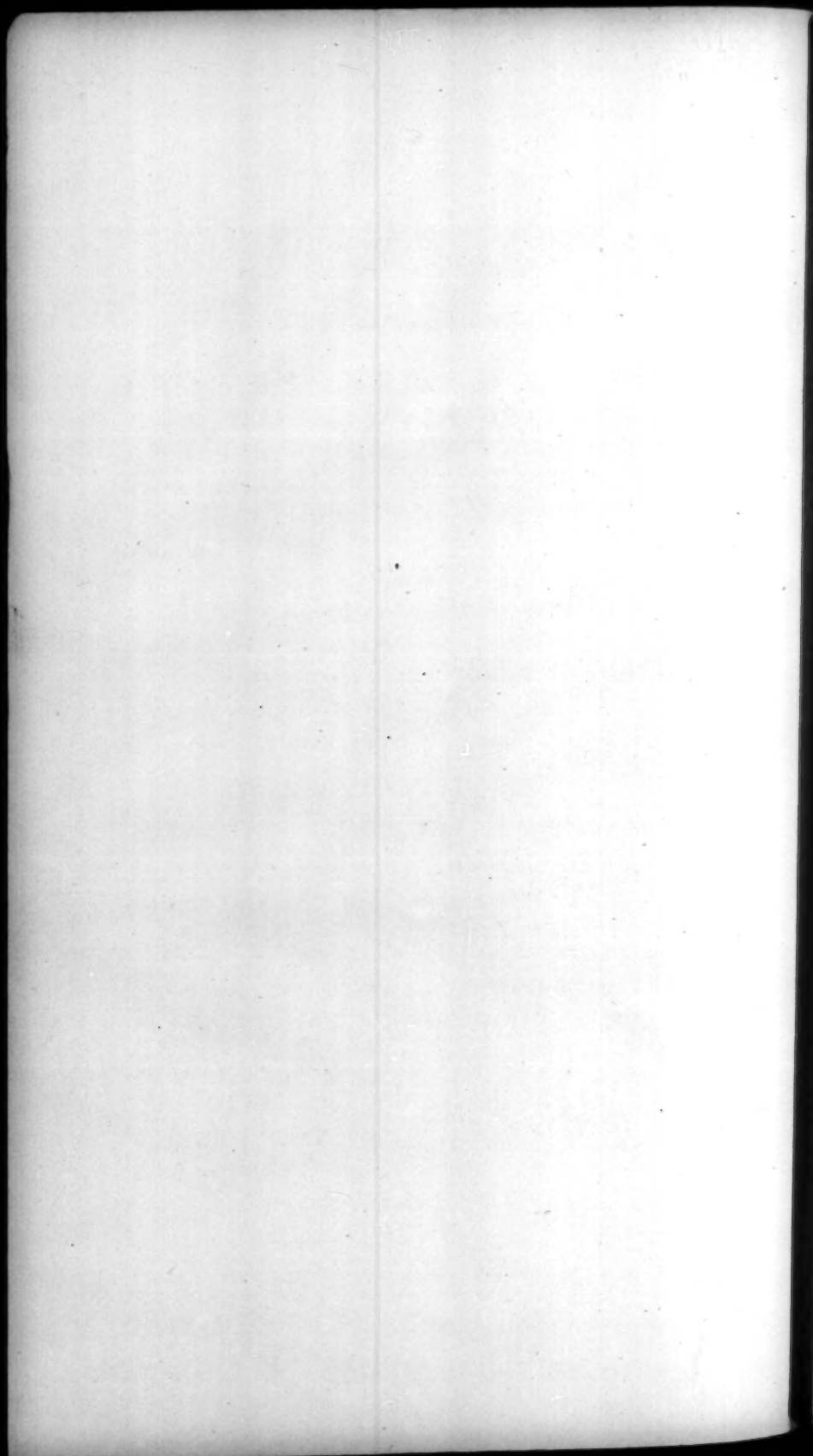
— *Neque sibi amicos parare, neque inimicos tollere, & nusquam gratia stabilis, velut qui eventum expectaverunt, ut Fortunæ applicarunt Consilia, tandem præda Victoris esse.*

Liv. l. 32. c. 21.

I H T O T

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518. c. 21.
5
A
S E Q U E L
T O T H E
C A S E

Of the Honourable

Mrs. WELD and her HUSBAND,
whom she Libelled for *IMPOTENCY*, &c.

CONTAINING,

- | | |
|---|--|
| I. Eighteen Letters written by Mr. WELD to his WIFE, after their Marriage. | <i>Fisher, Rebecca Mann, and Mary Baker, concerning the Virginity of Mrs. WELD.</i> |
| II. A Letter from Mrs. WELD to her Husband's Mother. | V. The Proceedings upon the APPEAL, in the Court of DELEGATES, And Dr. Bettesworth's Sentence at Large; which was fully confirmed. |
| III. The Certificate of Five Surgeons, viz. Mr. Serjeant Dickens, Claud. Amyand, William Cheselden, Alex. Small, and William Green, in Behalf of Mr. WELD's Virility. | VI. The ALLEGATIONS admitted, on the Behalf of both PARTIES, which perfect the whole Proceedings in this Cause. |
| IV. The Certificate of Three Midwives, viz. Elizabeth | |

Published by the Author of the former Proceedings (intituled the CASES of IMPOTENCY and VIRGINITY fully Discussed)
JOHN CRAWFURD, L L. D.

L O N D O N :

Printed for W. MEARS, at the *Lamb*, on
Ludgate-Hill. M.DCC.XXXIV,

1. 1000 for W. Meers, at the time, on
August 11th. M. Dec. xxxiv.



THE
CASE Stated.



EDWARD WELD, Esq;
married the Honourable CATHERINE
ELIZABETH, Daughter of the Lord
Aston, June 22, 1727; *Ætat.* 22,
the Lady 19. After his Marriage,
he cohabited with his *Wife* at his
own Seat, *Lulworth-Castle*, in the
County of *Dorset*, till June, 1728,
excepting one Month, wherein,
being *indisposed*, she came to *Lon-*
don for Advice. She goes to *Stan-*
don, in the County of *Hertford*,
the Seat of her Father, where, in
October following, her *Husband* co-
habited

habited with her about a *Month*; then left her, and returned to his own Seat, *Lulworth-Castle*, where he continued till *February*, 1728-9, and came back to his *Wife* at her Father's Seat, and stayed with her about *Three Weeks*. Left her there a second Time, and went home to *Lulworth - Castle*, and continued there till the latter End of *May* following. Then returned to her again for *One Week*. After this they both came to *London*, and cohabited as Man and Wife for about *Five or Six Weeks*. After which Time Mr. *Weld* goes home to *Lulworth*, and stayed there till *November* following; Mrs. *Weld* goes to her Father's, where Mr. *Weld* and she again cohabited for about *Three or Four Weeks*. He leaves her there; but *thinks*, in all this Time, that he did *once or twice* CARNALLY Know her *. Like-
wife,

* See his *Answer to the Libel*. Part I. p. 12.

The CASE Stated. vii

wife acknowledging her to be *Able, Apt, and Fit* for the PROCREATION of Children. Yet, farther confesses, that, for Relief of his *Natural Impotency*, he consulted Mr. *John Williams*, a Surgeon, who advised him to apply to Dr. *Mead*; this, *he did not do*, but applied to Dr. *Strother* concerning the same. Lastly, he owns that he did declare to the Duke of *Norfolk* and Mr. *Colclough*, that he had not Consummated his Marriage; and that his Wife will not therefore any longer cohabit with him. He urged to her, that, *Many married People had lived together like Brother and Sister* *. But this Kind of matrimonial Life his Spouse justly disliked, replying, *My Dear, we ought not to live together after this Manner*. All the Fair Sex will agree with Mrs. *Weld*, that a married State

* See his Answer to her Allegation. Part I. pag. 25.

viii *The CASE Stated.*

State ought to be another *Manner of Life*. However, we shall now leave every Reader, Male and Female, to judge, as they think proper, of this *un-conjugal Conjunction*.

V A L E.





A
S E Q U E L
T O T H E
C A S E
O F T H E
Honourable Mrs. WELD, &c.

I N T R O D U C T I O N .



HAVING upon OATH
(made before the late
Right Hon. and truly
upright Judge, Sir Ro-
bert Raymond, Lord
Chief Justice of his Majesty's Court
B of

of *King's-Bench*, on the 10th Day of *March* 17³²) published all the *genuine Proceedings* I could then procure, in a *Cause depending in the Arches Court of Canterbury*, between the Hon. Mrs. WELD and her Husband, whom she libelled for IMPOTENCY. I now offer, according to my Promise, what was in that Tract omitted, *viz.* Nineteen LETTERS, which were sent to the LADY by her HUSBAND, sometime before she commenced the Suit against him; as likewise one LETTER wrote by her to his MOTHER, which is here inserted. And as the Abstracts of the several DEPOSITIONS in the former Tract, made by *Matrons* and *Surgeons*, were so imperfect, that there did not, I acknowledge, appear sufficient Grounds to found a Sentence upon them: The Reader will find in this Tract, the full Substance of all those DEPOSITIONS,

TIONS, which were, indeed, the most material in the Case. Here is farther added, a just Translation of the Sentence given in the Court of *Arches*, which was confirmed (upon an APPEAL) by the Court of *Delegates*, a Sentence, in every Part, esteemed by all Men of Learning, most equitable : For, tho' a Cause of *Frigidity* and *Impotency* may be justly commenced after *Three Years* Cohabitation of the Parties Married, where no *Consummation* was had, when repeated Endeavours were used to that End; and, tho' this plainly appears to be the Case here, from the Answer of Mr. WELD *himself*, from the DEPOSITIONS of *Witnesses* of great Honour and Credit, containing frequent Complaints made by him of his own *Inability* that Way; from the *Reports* likewise of the *Matrons* who inspected the *Lady*; yet it appearing in the same Cause, by

the *Report* of very able *Surgeons*, commissioned to inspect the *Husband*, that he was then, before Sentence given, *able to perform the Act of Generation to all Intents and Purposes* ; and, moreover, the former Obstruction and Cause of the *Husband's* not Consummating his Marriage, being clearly accounted for, by *Mr. Williams*, another skilful Surgeon, and the *Removal* of the *Obstacle* attested by him. The Court could not be supposed to give any other *Sentence* than what they did ; for it must ever be allowed a sufficient Reason to discharge the *Husband* from such Complaints made by his *Wife* against him ; that, there is, at the Time, an *Ability* to consummate the Marriage notwithstanding any previous Defect.

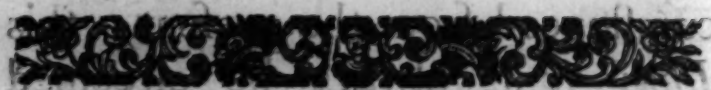
One Thing more, I beg leave to say, That without enquiring into the
the

the Case of Others differently circumstanced from the present, this *Lady* must always be esteemed blameless in commencing this Suit, as *she* was herself, and her *Husband* likewise, a *Roman Catholick*. For it is very well known, that by their Religion, Matrimony is a *Sacrament*; and it is understood amongst those People, that this *Sacrament* is violated by such as continue together in that State, while they are conscious to themselves, that they cannot Answer the *holy Ends* of MATRIMONY.

Oct. 29.
1733.

JOHN CRAWFURD.

The



The following DEPOSITIONS
are Supplementary to those printed
in the former Part of this *Case*.
Pag. 29.

DEPOSITION I.

MR. WILLIAMS * deposed,
Aug. 10, 1730, That Mr.
WELD came to him last Summer,
and that upon examining the *Penis*,
he found the *Frenum* too streight,
which he set at Liberty, by clip-
ping it with a Pair of Scissars; and
examining that Part, that Day, again,
found nothing amiss in the Organs
of Generation.

DEPO-

* *An eminent Surgeon.*

DEPOSITION II.

LORD ASTON deposed, that Mr. WELD and Mr. COLCLOUGH being together at his House in *Hertfordshire*, in May 1729, He desired Mr. COLCLOUGH to speak to Mr. WELD about his *not having consummated the Marriage with his Daughter.* Mr. COLCLOUGH declared, he had spoke to him, and he confessed, he had *not consummated his Marriage with the said Mrs. WELD ; and,* that he had *some outward Defect that was painful to him, and hindered him from consummating his Marriage.* That Mr. COLCLOUGH had recommended one Mr. WILLIAMS to Mr. WELD, who had cured him ; and that the said Mr. WELD told the Deponent, at the
Lady

Lady HOWARD's, that Mr. WIL-
LIAMS had *cured him, but that*
some Soreness remained; but, he did
not doubt but he should be well in a
little Time.

DEPOSITION III.

THE Duke of NORFOLK
deposed, That in *June 1729,*
when he talked to Mr. WELD
about the Affair, he acknowledged,
he had *not consummated his Marriage*
with the Honourable (Mrs. ASTON)
but had advised with Physicians;
and hoped, in a little Time, he should
be able to consummate it.

LET-



LETTERS

SENT FROM

Mr. WELD, to the Hon.
Catherine Elizabeth, while
she was absent from his
House, and resided at Lord
ASTON's.

LETTER I.

My DEAR,

Nothing could give me more
Satisfaction than your ready
Compliance with my Desire, in re-
gard to your Maid; your not men-
tioning your Design to do so, but
C refer-

referring it, with other Things, to the Time of our Meeting, occasioned the Letter that, I suppose, you have received upon *Tuesday*. I propose now to hasten all Things for my Journey, to enjoy the Satisfaction of your Company that is so dear to me, and always shall continue to be promoted all that lies in the Power of the Person that calls himself

Your faithful Husband,

and humble Servant,

Lulworth, Oct.
16. 1728.

E. WELD.

P. S. *My Mother sends her Blessing ; my Brother and Sister their Love.*

LETTER II.

My DEAR,

THE Weather was an Hindrance to me in setting out from *Wallington-Park*, so soon as I designed; so that I only arrived here *Wednesday* last very safe and well. I likewise found every body here well, who return their Respects to you. I shall take the next Post, or the following, to return my humble Thanks to my Lord, for the kind Entertainment I met with at *Standon*; but in the mean Time, I desire you would let him know, that I am safely arrived, and am obliged to him for all Favours.

I am, my Dear,

Your affectionate Husband,

and humble Servant,

*Lulworth, Saturday,**Dec. 14. 1728.*

E. WELD.

LETTER III.

My DEAR,

I Received yours the last Week, and am very glad to hear you are all well: My Brother has received yours, which you desired to know in your last: As to the other Things you mention, I desire that they may be sent as soon as you can. I shall wait with Impatience till I hear from you again, that you have received this, and my Lord, my last. We have had some Snow, but it is now going away; I suppose you likewise have not been without your Share.

I am, my Dear,

Your humble Servant,

and Husband,

Lulworth, Jan.

6. 1728-9.

E. WELD.

P. S. *We hear that my Lord Arundel is married by this Time in Town.*

LETTER IV.

My DEAR,

I Received yours today, and I Design to send you the *old Turkey-Cock*, because the young one being bred here, is more acquainted; next Week it will be in Town. It happened very well, that you now sent, for they wanted Parting after so many Battles that they have had at this Season of the Year. I think, I told you, in my last, what I would have you to do with the Pamphlets. Please to return my Thanks to my Lord for his kind Letter: It pleases me mightily to find he is so Well this Frosty Weather. I hope he has good luck with the *Woodcocks*; if I thought he had not, and they were more plenty here, a Pye, or
a Pot

(14)

a Pot of them should have been a
Christmas Remembrance to him.

From, my Dear,

Your humble Servant,

and Husband,

Lulworth, Jan.

11, 1728-9.

E. WELD.

*P.S. My Mother and Sister pre-
sent their Service to you.*

LETTER V.

My DEAR,

YOURS came to me last
Week; I hope this will find
you well, and my Lord; I was very
sorry to hear from you, that my
Lord would be a loser by the break-
ing of this Man; but in the End,
I hope it will not prove so to him,
tho' I continue in the same Appre-
hensions I mentioned to my Lord
in my last. My Affairs here, which
have

have been very troublesom, and something disadvantageous, I hope, are now in such a State, that I propose to myself, the Happiness of enjoying your Company, upon *Saturday* Sevensnight. I should have been glad to have had the Satisfaction of seeing the Person I so much Love before now; but what has deprived me of it, cannot but be a reasonable Excuse with you. Colonel *Stroughton* has favoured me with his Company these two or three Days, and presents his Respects to you, as do all here.

I am, my Dear,

Your faithful, and

affectionate Husband,

Lulworth, Feb.

3. 1728-9.

E. WELD.

LETTER VI.

My DEAR,

I Arrived here last Night; I am sorry I have disappointed you in not coming down as tonight, as I proposed; but I hope, upon *Monday* or *Tuesday* you will see me at *Standon*. I left all very well at *Lutworth*, and find my Lady *Howard* so here. I leave it to you to excuse the Trouble I shall bring to my Lord, tho' it is with the Satisfaction that I shall wait upon his Lordship; I hope I shall find you in good Health.

I am, my Dear,

Your affectionate Husband,

Ormond-street, Feb.

15. 1728-9.

E. WELD.

L E T T E R VII.

My DEAR,

I Can with Pleasure acquaint you, that I arrived here on *Saturday* Night, by the Help of my Uncle's Pad, my own having fell lame before I came to *Watlington-Park*. I hope my Lord and you keep your Health Well; please to tell my Lord, the News I wrote him from Town has been confirmed to me by two or three Hands, of which I am very glad, and do Congratulate my Lord upon it. I was so happy as to have Mr. *Stroughton's* Company down to *Watlington-Park*; from whence he designs to Travel into the *West*, to take a View of Mr. *Cottington's* Estate, under his Grace of *Norfolk*. My Respects and Thanks, wait upon my Lord for the mighty and obliging Reception

D

tion I was honoured with at *Stan-*
don.

I am,

Your humble Servant,

and Husband,

Lulworth, March

24, 1728-9.

E. WELD.

L E T T E R VIII.

My DEAR,

I Had the Pleasure of receiving
your Letter, which removed
from me a great deal of Uneasiness
occasioned by your not Writing
so soon (after my Lord had ac-
quainted me, that you had been
out of Order) as I could Wish. I
had an Epistle from Mr. *Thraffeild*
last Post, concerning the *Chard* *
which I hope to see here to mor-
row. In that he acquainted me you
were

* *Chard-Fish.*

were all well at present. I am pretty well recovered of my Illness, but Dr. *Mitchel* has been here prescribing something to my Brother, who has been very much out of Order, tho' now the very Sight of the Physician has put him in a fair Way. I am very glad we have found the Nests of our three *Turkeys*, and in them almost one with another twelve Eggs apiece: So that I have a great Prospect of young *Pouts* against the Summer. These are from,

My Dear,

Your humble Servant,

and Husband,

Lulworth, April

12, 1729.

E. WELD.

L E T T E R IX.

Mr DEAR,

I Have received both your Letters concerning the House-keeper; you will enquire into her Character, while you are in Town; but I think seven or eight Pounds a Year enough for me to give: If she won't come for that, and you cannot find out another that will, I propose to put Margaret to take Care of the House and Linnen, and help to wash at the same Time; for I shall keep only one House Maid, and one Cook. In five or six Weeks Time, I hope you, and the Maid you have provided, will be ready to come down. I propose to be with you before that. Costin's Bill was not brought to me before I went out of Town, so I suppose he is uneasy for not being paid soon enough. If you have Money enough
by

by you, I desire you will Discharge him : As to the Church Stuff, I suppose you have made Choice of that you mentioned to me at *Standon*.

I am, my Dear,

Your affectionate Spouse,

Lukworth, April

16, 1729.

E. WELD.

LETTER X.

My DEAR,

I Am very much obliged to the *Lady Howard*, that she would please to favour me with a Letter so soon, and I hope mine found her Ladyship well; I am glad to think the Time draws so near of seeing you, for I have now resolved to set out for *Watlington*, on *Thursday* the 15th, and by the End of the next Week to be in *Ormond-Street*.

I should

I should be very glad, my Dear, if you could prevail with my Lord to carry you to Town by that Time, for I want to have his Company, tho' I cannot possibly wait upon him at *Standon*; yet if you desire it, I will do myself the Satisfaction to see him there for two or three Days, and then return with you to *Lulworth*, without much Stay upon the Road: If you have received any Money from Mr. *Wright*, I desire you would give it *Standon*. What I did design to do, I told you of before; if you cannot prevail with my Lord to come to my Lady's about that Time, let me know at *Watlington-Park*, and then I will wait upon him on *Tuesday* or *Wednesday*, the 27th or 28th of this Instant, and return upon *Saturday*, and set out upon *Monday* or *Tuesday*, as you will think fit. If you could order your Affairs so, it would look very
well

(23)

well here, since you design to
live here; and to come down so
soon, would oblige,

My Dear,

*Your faithful Husband,
and humble Servant,*

Lulworth, May
14, 1729.

E. WELD.

L E T T E R XI.

My DEAR,

I Arrived here but yesterday, and
but then received yours. I am
sorry we could not meet in Town
this Week, as I proposed; but
tho' my Affairs press on so much,
I shall wait upon my Lord upon
Wednesday or *Thursday*, the 28th
or 29th, and return to *London* upon
Saturday, in order to be at *Lul-*
worth upon *Corpus Christi* Eve. I
desire you will finish your Affairs,
so

(24)

so as to be ready by that Time,
since your Stay there has been so
long.

I am, my Dear,

*Your humble Servant,
and Husband,*

*Watlington-Park,
May 22, 1729.*

E. WELD.

*P. S. My Mother sends you her
Blessing, my Uncle and Sister their
Respects.*

LETTER XII.

My DEAR,

MY Journey was very safe to
Watlington-Park, where I
found my Uncle *Simeon* well; he
returned his Respects to you and
my Lord; but, in the Way from
thence hither, I was forced to take
up with a little Cottage upon the
Downs,

Downs, to save my self from the hard Rain, which continued for seven Hours incessantly, there I staid my Stomach till Supper-time, with a Rasher of rusty Bacon, and a Mug of Ale; after that, my Journey was pleasant, and I arrived here upon *Saturday*. The House-Keeper came upon *Friday*, and pack'd up your Things and sent them to *Gildon's*; but she tells me, she can't find the Money, but will look again, if you can guess whereabouts it may be.

I am, my Dear,

Your most humble Servant,

and Husband,

Lulworth, Aug.

4. 1729.

E. WELD.

E

L E T T E R XIII.

My DEAR,

I Was very glad to receive a Letter from you, to put us in a way of finding what you was so much concerned about; which it is plain to be seen, was only a Mistake in the Search, since she ought to have looked in that Place the first. There should have been no need of putting me in Mind to search in the strictest Manner, and to have sought out the Offender, as much as if it had a thousand Times exceeded the Sum, which was found, which I hope comes up to what you expected, and had placed there. I am now concerned for my Brother *Aston*, since you expected him so soon; I hope he has safely passed the Water, and before this Time has seen my Lord and you.

Please

Please, my Dear, to give my Respects and Love to him; I wish his native Air, and *English* Physicians may perfectly recover him. I imagine upon his Account, my Lord is scarce set out for *Staffordshire* yet, tho' it is a Week exceeding his proposed Time. I desire my Duty, with all Respects to him, and a second Time wish him a safe Journey.

I am, my Dear,

Your most faithful Husband,

and humble Servant,

Aug. 25. 1729.

E. WELD.

P. S. *My Respects to my Brother
Jemmy and Mrs. Mano.*

L E T T E R XIV.

My DEAR,

I Am sorry to tell you, that an
Affair here, I am afraid, will
detain me longer than the Time I
proposed; it is what must be done
before I come to Town. I hope
you have taken care to order Mr.
Skinner to make *Tom* a new Livery;
for I dare say he is ashamed to be
seen with the Cloaths he has on;
if you have not thought on it, I
desire you will speak soon. I have
received some Things from the
House-Keeper in a readiness to
bring them up to you, which I
shall endeavour to do with Safety.

I am, my Dear,

Your faithful Husband,

and humble Servant,

Lulworth, Sept.

30. 1729.

E. WELD.

P. S. *My Respects where due.*

LETTER XV.

My DEAR,

I Return you Thanks for the Favour of yours, which was very agreeable to me; I hope you continue in good Health, and likewise the Family you are with, to whom I present my humble Respects. I shall have the Happiness in a very short Time of seeing you, I am sorry that some small Things that required my Sanction, have detained me so much longer from you than I could wish. The Time of my Return will be towards the End of the next Week, till when I shall wait with Impatience.

I am,

Your affectionate Husband,

and humble Servant,

Oct. 27. 1729.

E. WELD.

LETTER XVI.

My DEAR,

I Am sorry I had not the Happiness to meet you and my Lord here as I expected, which would have taken off something of my Journey in seeing you well, since my Lady hath acquainted me that you have been something out of Order before you went into the Country; I hope I shall have the Pleasure of finding you, and my Lord, and my Brother well within this Week; but accept this with my Love, till I shall find more Time being just come to Town, since when I have heard that melancholly News of Mr. *Ingleby's* Death, which is an Occasion of Grief to me, since my Brother *Weld* is left alone at *Paris*. My Lady is well, and presents her Service, give me leave to present
mine

mine to my Lord, and my Brother
Aston.

I am, my Dear,

Your affectionate Husband,

Nov. 8. 1729.

E. WELD.

L E T T E R XVII.

My DEAR,

WITH your last I received a great deal of Satisfaction to find that you and my Lady were well; and my Brother *Aston* likewise, better than you could have expected. I hope the last Letters you received out of *Staffordshire*, left my Lord in good Health, and by this Time thinking of his Return to *London*. I am sorry my Country Affairs have made it necessary for me to remain here so much longer than

than the Time I proposed to be
absent from you; but I hope to
return to you about the End of the
next Week, when, without fail, you
may expect me; in the mean while
please to make my Compliments
acceptable to my Lady and Mr.
Saltmarsh, and welcome them to
their new House.

I am, my Dear;

Your most dutiful, and

affectionate Husband,

Lulworth, Nov.

29. 1729.

E. WELD.

L E T T E R XVIII.

My DEAR,

I Am very glad to hear you are pretty well recovered of your Cold, as well as my Lord, to whom my Duty and Respects; and please to inform him, that it shall be with the greatest Pleasure and Satisfaction to me to comply with his so kind Invitation to *Standon*. I never made any doubt, but that thro' my Lord's Goodness and Civility shewn to me, I should always be received with a Welcome there; but as to your Letter that mentions it, I only received it here, since I was set out upon that *Monday* for *Brightwell*. I am afraid I must stay till *Sunday* or *Monday*, before I can please myself so far, as to wait upon my Lord

F

and

and you. I desire you will present my Respects to my Brother
Aston.

I am,

Your affectionate Spouse,

Nov. 11. 1729.

E. WELD.

*P. S. I have so far prevailed
with my self to have Mr. Lully
to put me in a better way.*

Dick brought it.

LETTER XIX.

My DEAR,

MY Business continuing, I was
obliged to surpass the Time
I appointed for my Return to you;
please to make my Respects and
Service

Service acceptable to my Lord,
 and my Brother. My Lady *Howard*
 has desired me to acquaint my
 Lord, that his Letter was received
 this Afternoon, only upon *Saturday*
 and *Monday* I was present at the
 the Tryal of Mr. *Fitzgerald* and
 Lord *Falconberg*, wherein several
 Aspersions were laid to my
 Lord *Aston*, but fully cleared by
 the Counsellors *Strange*, *Fenwick*,
 and Another. When I come down,
 which will be, I hope, the next
 Week, I shall give you a farther
 Account,

I am, my Dear,

Your affectionate Husband,

and Servant,

London, Dec. 9.

1729.

E. WELD.



A
LETTER
FROM

Mrs. WELD, to her Husband's Mother.

To Mrs. WELD, at Watlington-Park, Oxfordshire.

MADAM,

I Suppose by this Time my Sister is arrived; she has all the good Wishes possible that I am capable of; and if you will do me the Favour to tell me it is done, I will wish her Joy by a Line to her

her my self. I hope you have received my Letter, wherein I was in a true Concern for my Brother, and am very glad to hear it is only an Ague, which I hope is quite gone by this Time. I am extremely sorry I could not see you before I left *London*, which makes me give you this Trouble, to assure you, I would not tell my Lady *Howard*, tho' she pressed me several Times to know if I was easy at *Lulworth*. I am sure, Madam, you are very sensible to the contrary; and you must also be a very good Judge in the Cause, being you never seemed easy nor contented with any thing: This, Madam, I hope, will convince you I have a true Respect for all your Family; I am sure it was my daily Care, I need not name Particulars, not doubting, you are sensible how many Things you have vexed me in; therefore, I hope, when

when you have considered them, you will not think me unreasonable in desiring you to take away your Furniture from *Lulworth*, and fix your self in some other Place; then, I do promise you, I shall never desire to live in any other Place. I am too much convinced, that when one is Married, they are to make That their Home, and I am very willing to do it, if I have no other Person to please than my Mr. WELD. I Considered before I was Married, and, tho' I was in great Concern to part with my Papa, I was resolved to remove that Contradiction and it has been daily more easy to me, because it has pleased God to give him his Health; but if this is not agreeable to you, then you may easily persuade my Mr. WELD to *live elsewhere*, if you live at *Lulworth*. Mr. WELD's Concerns will not suffer any thing, for your former

mer Experience has proved it so. This *being only betwixt us, it may be easily done without Noise, or the World knowing it.* I beg your Answer. I am following the Doctor's Prescriptions; I cannot say I am much better; pray present my Respects to Sir *Ed. Simmons*, and humble Service to all the rest.

I am, Madam,

Your Dutiful Daughter,

and faithful humble Servant,

Aug. 8.

CATHERINE WELD.

The Substance of the CERTIFICATE of the five SURGEONS.

THAT they had carefully inspected the *Parts* of *E. WELD*, that are designed for *Propagation*, and did find them fully and justly *proportioned*, and fitly and sufficiently *formed* for the *Act of Carnal Copulation*; and that it did evidently appear to them, that he was capable of performing every *Thing* requisite to the *Propagation* of his *Species*.

Ambr. Dickens, Serj. Surg.

Claud. Amyand.

William Cheselden.

Alexander Small.

William Green.

The Substance of the Three
MIDWIVES Certificate.

THAT they are well skilled in the Art and Practice of Midwifery, and have very carefully and diligently inspected the *private Parts* of the Body, of the Hon. *Catherine Elizabeth Weld*, which are naturally designed for *carnal Copulation*; and that to the best of their Skill and Knowledge, she is a VIRGIN, and never had *carnal Copulation* with any MAN whatsoever.

Elizabeth Fisher.

Rebecca Mann.

Mary Baker.



THE
SENTENCE
IN THIS
CAUSE.

IN *the Name of God Amen.*
We JOHN BETTESWORTH,
Doctor of Laws, Official-Principal
of the *Arches Court of Canterbury,*
London, lawfully constituted, right-
ly and duly Proceeding, having
heard, seen, and understood, and
fully and maturely discussed the
Merits of a certain Cause of Nul-
lity of Marriage, by Reason of
Impotency and Frigidity, which is
controverted, and remains unde-
termined before us in Judgment,
between

between the Hon. *Catherine Elizabeth Weld*, otherwise *Aston*, the Wife of *Edward Weld*, Esq; of *Lulworth-Castle* in *Dorsetshire*, of the Diocese of *Bristol*, and Province of *Canterbury*, the Party Agent and Complainant on the one Part. And the said *Edward Weld*, Esq; the Party accused and complained of, on the other Part. And the Parties aforesaid, lawfully appearing before us in Judgment by their Proctors; and the Proctor of the said *Edward Weld*, praying Sentence to be given, and Justice to be done to his Party. And the Proctor also of the said *Catherine Elizabeth Weld*, earnestly praying Sentence and Justice to be done to his Party. And having first carefully and diligently searched into, and considered the whole Proceedings had, and done, before Us in this Cause; and having observed All and singular the Matters and Things,

that by Law, in this Behalf, ought to be observed, in order to give our Definitive Sentence and final Decree in this Cause. We have thought fit to proceed, and do proceed, in Manner following, That is to say, forasmuch as We have by the Thing enacted, deduced, alleged, exhibited, propounded, proved, and confessed, in this Cause, found and clearly discovered, that the Proctor of the said *Catherine Elizabeth Weld* hath not sufficiently and fully founded and proved his Intention, deduced in a certain Libel and other Pleadings, and Exhibits in this Cause, admitted on her Behalf, and now preparing in the Registry of this Court (which We take, and will have taken, as if here read and inserted) but intirely failed in the Proof thereof.

Therefore

Therefore we JOHN BETTESWORTH, Judge aforesaid, having God before our Eyes, and having heard Counsel in this Behalf, Decree, pronounce, and declare, that the said *Edward Weld* ought to be Dismissed; and to all Intents and Purposes of Law, We do Dismiss him from all Suit and Action commenced against him, by the said *Catherine Elizabeth Weld*, as deduced, set forth, and prayed by Her, in her intended Libel aforesaid; and that the said *Catherine Elizabeth Weld*, alias *Aston*, ought to be enjoined perpetual Silence in the Premises; and We do accordingly injoin her Silence, by this our Definitive Sentence, or final Decree, which by these Presents We do promulge.

After

After this Sentence given, Mrs. *Weld* was admonished by the Court to go home to her Husband, and Cohabit with him at Bed and Board, at *Lulworth-Castle*, his Mansion-House, and accustomed Place of Abode in the County of *Dorset*.

But, there being an APPEAL from this Sentence to the King, in his High Court of *Delegates*, the Cause was Re-heard at *Serjeant's-Inn*, and by the Judges there, the foregoing Sentence, and all other Proceedings of the Dean of the *Arches*, in this Cause, were Affirmed.

AN



AN
ALLEGATION

GIVEN INTO
The Court of *Arches*, on
Behalf of Mr. WELD, the
12th of Nov. 1733.

I. **T**HAT the Marriage be-
tween the said *Edward*
Weld, Esq; and the said *Catherine*
Elizabeth Weld, formerly *Aston*,
the Parties in this Cause, was
solemnized on the 22d Day of
June, in the Year of our Lord
1727, and not before.

2. That

2. That after the Solemnization of the said Marriage (to wit) on or about the 20th of *July* 1727, the said *Edward Weld*, and the said *Catherine Elizabeth*, his Wife, went down to the Seat of him, the said *Edward Weld*, at *Lulworth Castle*, in the County of *Dorset*, and there continued, and lived, and cohabited together, until on or about the 26th Day of *October*, then next following, on or about which Day the said *Catherine Elizabeth* went from *Lulworth Castle* aforesaid, to *London*, where she continued for the Space of a Month, or thereabouts, without the Company or Conversation of the said *Edward* her Husband; and for all the said Time, They the said *Edward* and *Catherine Elizabeth*, did not live, cohabit, or lie together.

3. That

3. That about a Month after the said 26th Day of *October*, in the precedent Article mentioned, the said *Edward Weld* went up to *London*, to the said *Catherine Elizabeth Weld*, his Wife, and they returned to the said Habitation of her Husband, the said *Edward Weld*, at *Lulworth-Castle* aforesaid, on or about the 8th Day of *December* following.

4. That in the Month of *June*, 1728, the said *Catherine Elizabeth Weld*, being much indisposed, as to her bodily Health, went from the Seat or Habitation of the said *Edward Weld*, her Husband, at *Lulworth-Castle* aforesaid, and came up to *London*, for Advice of Physicians, and continued there, or in the Parts adjacent, for the Space of three Months and upwards (to wit) from the said Month of *June*

H until

until the Month of *October* then next following ; and she the said *Catherine Elizabeth*, did live separate and apart from her said Husband ; and for, and during all the said Time, they did not live and co-habit together at Bed and Board.

5. That in *October*, 1728, the said *Catherine Elizabeth* being at the House of her Father, the Right Honourable the Lord *Aston*, at *Standon*, in the County of *Hertford*, the said *Edward Weld*, her Husband, went thither to her, and stayed there with her about three Weeks, and applied to her, and desired her to go home with him, and told her, that his Affairs required his Presence in the Country ; but she refusing to go Home with him, he the said *Edward* returned to *Lukworth-Castle* aforesaid, leaving the said *Catherine Elizabeth* at

at *Standon* afore said; and, during that Time, he the said *Edward Weld*, was at *Lulworth-Castle* afore said alone, and continued there, without the Company of his said Wife, until the Beginning of *February* following.

6. That towards *Lent*, or about the Beginning of *February*, 172⁸, the said *Edward Weld* went to his said Wife, then at her Father's House afore said, and then again applied, and desired her to go Home with him to their Habitation at *Lulworth-Castle* afore said; but he the said *Edward* continued at *Standon* afore said, expecting his said Wife would have returned with him to *Lulworth-Castle* afore said; but finding she would not, he the said *Edward* did return to *Lulworth-Castle* afore said alone, and there continued, without the Company of the said *Catherine Elizabeth*,

his Wife, until the Month of *May*, 1729.

7. That in the Month of *May*, 1729, he the said *Edward Weld*, hoping to prevail with the said *Catherine Elizabeth* his Wife, to return with him to their Habitation at *Lulworth-Castle* aforesaid, went to her, then at her Father's House at *Standon* aforesaid, where he continued for about the Space of a Week, and then the said *Edward* and *Catherine Elizabeth* came to *London* together to the Right Honourable the Lady *Howard*, of *Workop*, then in *Red-Lion-Square*, for the Space of five Weeks or thereabouts, and then the said *Edward* earnestly pressed and importuned his said Wife to go home to *Lulworth-Castle* aforesaid, which she refused; and thereupon he the said *Edward* applied to the Lord *Aston*, her Father, aforesaid, and not

not prevailing with him by Intreaties, to cause his said Daughter to return home with him the said *Edward* her Husband, did, in a serious and solemn Manner, demand her of her Father, and required she should go home with him, which he absolutely refused, and would not suffer his said Daughter to go home with the said *Edward Weld*, her Husband, to *Lukworth-Castle* aforesaid.

8. That at several Times, and more particularly at the Time mentioned in the preceeding Article, when the said *Edward Weld* desired, and earnestly requested, the said *Catherine Elizabeth*, his Wife, to go home with him to *Lukworth-Castle* and cohabit there with him, as by Law she ought to do, the only Reason then suggested and pretended by her to him the said *Edward Weld*, for not cohabiting with

with him there, was, that her Mother was still resident in his Family, and continued to live with him, notwithstanding she the said *Catherine Elizabeth* had wrote a Letter to his said Mother to forbid her the House in very peremptory Expressions, without the Consent or Knowledge of the said *Edward Weld*, her Husband, consequent to which, the said *Edward Weld* did not hinder the Effect of the said Letter, and his Mother, Brother, and Sisters, thereupon did remove from his Seat of *Lukworth-Castle* in or about the Month of *May* 1729, that there might not be any Uneasiness upon that Account; and that she the said *Catherine Elizabeth*, might not have any the least Pretence for not cohabiting with him at his own House, as by Law she ought to do; and so much the said *Catherine Elizabeth Weld* very well knew,
and

and was informed of; notwithstanding which, she refused to go down with him to *Lulworth-Castle*, and cohabit with him there, as by Law she ought to do.

9. That the said *Edward Weld*, finding he could not prevail with the said *Catherine Elizabeth*, his Wife, to go home with him to their Habitation at *Lulworth-Castle* afore said, his the said *Edward's* Affairs requiring his Presence there, he the said *Edward*, in the Month of *July* 1729, was obliged, and did return to *Lulworth-Castle* afore said, where he continued alone, without the Company and Conversation of his said Wife, until the latter End of *November* following, his said Wife continuing at her Father's, the said Lord *Aston's* House, at *Standon* afore said.

10. That

10. That in or about the latter End of November 1729, the said *Edward Weld* being desirous, and hoping he might prevail with the said *Catherine Elizabeth*, his Wife, to return home with him to *Lulworth-Castle* aforesaid, did, about the latter End of November 1729, aforesaid, go to the House of the said Lord *Aston* at *Standon* aforesaid, where his said Wife then was, and there he the said *Edward* continued for the Space of about three Weeks, and then intreated and desired her to go with him, but finding he could not prevail with his said Wife to go home with him, left her at her said Father's House, and came to *London*, where he continued, without the Company and Conversation of his said Wife, until after *Christmas* Holidays then next following, and now last past; and from the Time of his leaving *Standon*

don, as aforesaid, to this very Time, he the said *Edward* hath not seen the said *Catherine Elizabeth*, his Wife.

¶ 11. The Party proponent, for Supply of the Proof of the Premises of the eighth Article of this Allegation, and to all other Intents and Purposes in Law whatsoever, doth exhibit and hereunto annex the original Letter, in the said Article mentioned, marked (A), * and doth alledge the said Letter to be totally wrote, subscribed by, and with the proper Hand of the said *Catherine Elizabeth Weld*, and that the said Letter was sent by the General-Post to, and received by, the said Mrs. *Margaret Weld*, in the Month of *August* 1728; and doth farther alledge, That, *my Mr. Weld*, in the said Letter mentioned, and *Catherine Weld*, by whom the said Letter was wrote,

I

sub-

* See Page 36.

subscribed, and superscribed, and *Edward Weld*, and *Catherine Elizabeth Weld*, Parties in this Cause, are the same Persons, and not divers ; and doth also alledge, that *Mrs. Weld*, to whom the said Letter is directed, and the Party proponent's Mother in the said Article mentioned, is the same Person and not divers.



A N

ALLEGATION

GIVEN INTO

The Court of *Arches*, on
Behalf of Mrs. WELD, the
19th of *Jan.* 1730.

I. **T**HAT the said *Catherine Elizabeth Weld*, alias *Aston*, being somewhat indisposed in her Health, did, at the Desire of her Husband, the said *Edward Weld*, or, at least, by and with his Consent, on or about the 23d Day of *October* 1727, the Time mentioned in the second Article of the Allegation, admitted in this
I 2 Cause,

Cause, on the Behalf of the said *Edward Weld*, begin her Journey from *Lulworth-Castle*, in the County of *Dorset*, for *London*, in order to take Advice of Physicians, as to such her Indisposition ; that the said *Edward Weld* did accompany her, Part of the said Journey, as far as *Salisbury*, and the said *Edward* and *Catherine Elizabeth* lay together there all Night in one and the same Bed, and dined there together the Day following.

2. That the said *Edward Weld* soon after (to wit, on or about the 21st Day of *November* following) came to *London*, to his said Wife, and they, the said *Edward Weld* and the said *Catherine Elizabeth*, from that Time lived together at the House of — *Scabown* in *Great Ormond-Street*, and lay together there, in one and the same Bed, * *Solus cum, sola* & *nudus cum nuda,*

* *Alone and Naked.*

nuda, until the 4th Day of *December* following.

3. That the said *Edward* and *Catherine Elizabeth* went together from the said *Scabown's* House, in *Great Ormond-Street*, upon the said 4th Day of *December*, for *Lulworth-Castle*, and arrived there upon the 8th Day of the said Month, and from that Time, until the 6th Day of *July* following, lived together at *Lulworth-Castle*, and for, and during, all the said Time, lay together in one and the same Bed, *Solus cum sola & nudus cum nuda*,

4. That the said *Catherine Elizabeth Weld*, being again indisposed in her Health, did again, at the Desire of the said *Edward Weld*, or at least by, and with, his Consent and Good-liking, upon the said 16th Day of *July* 1728, and not before, begin her Journey
for

for *London*, in order to take the Advice of Physicians for such her Indisposition : That the said *Catherine Elizabeth*, at the said Time, went in the said *Edward Weld's* Coach from *Lukworth-Castle* to *London*, and the said *Edward Weld* did again accompany her, as far as *Salisbury*, Part of her Journey ; and the said *Edward* and *Catherine Elizabeth* lay together, the same Time, all Night, at *Salisbury*, in one and the same Bed, *Solus cum sola & nudus cum nuda* ; And the said *Catherine Elizabeth* did get to *London* upon the 18th Day of the said Month, and not before.

5. That during the Time of Absence of the said *Catherine Elizabeth* from the said *Edward Weld* the same Time, which was from the 17th Day of *July* 1728, until the 6th Day of *November* following, the said *Catherine Elizabeth*,
after

after she had staid some short Time at the Lady *Howard's* House in *Ormond-Street*, to take the Advice of Physicians for such her Indisposition, lived with her Father, the Lord *Aston*, partly at *Standon* in *Hertfordshire*, and partly with his Lordship at *Tixel* in *Staffordshire*, and the said *Edward Weld* was privy and consenting to the same; that during the Time of such her Absence, the said *Edward Weld* corresponded with her by Letter, and promised, from Time to Time, that he would come to her, but did not at any one Time, during the Time the said *Catherine Elizabeth* lived apart from the said *Edward*, which was from the said 17th Day of *July* 1728, till the 6th Day of *November* following, go to visit her the said *Catherine Elizabeth*, nor ask or desire the said *Catherine Elizabeth* to come to him to *Lukworth-Castle*,

Castle, or shew any Inclination for her to come there to him.

6. That towards Supply of Proof of the Premises in the foregoing Article, and to all other Intents and Purposes in Law whatsoever, the Party proponent doth exhibit, and hereunto annex, a Letter, marked N^o. 1, * beginning thus (to wit) *My Dear, nothing could give me more Satisfaction,* and ending thus (to wit) *All that lies in the Power of the Person that calls himself your faithful Husband and humble Servant,* and subscribed *E. W.* and dated *Lukworth, October the 16th 1728*; which Letter, Subscription and Date, the Party proponent doth alledge, to be all of the proper Hand-writing of the said *Edward Weld*, Party in this Cause, and so known to be by the Persons who have seen him write, and are well acquainted with his Manner

Manner and Character of Hand-writing, and was sent by him to the said *Catherine Elizabeth*, during the Time she was at the Lord *Aston's* House the said Time.

7. That upon the said 6th Day of November 1728, the said *Edward Weld* came to London to the House of the Right Honourable the Lady *Howard* in *Ormond-Street*, where the said *Catherine Elizabeth* then was; and there being no Convenience for his lying there that Night, he went away, and returned to her there the next Day, where he cohabited with her at Bed and Board until the 12th Day of the said Month of November; and they the said *Edward Weld* and *Catherine Elizabeth*, went to *Standon* in the County of *Heriford*, the Seat of the Right Honourable the Lord *Aston*, and there the said *Edward* and *Catherine Elizabeth* cohabited

together, at Bed and Board, for upwards of three Weeks; and then the said *Edward Weld*, pretending to have Business at *Lulworth-Castle*, left the said *Catherine Elizabeth* at the said Lord *Aston's* House, and promised to return to her there as soon as he had settled his Affairs at *Lulworth-Castle*; that during the Time, the said *Edward Weld* cohabited the said Time with her the said *Catherine Elizabeth*, at the said Lady *Howard's* House, and at the said Lord *Aston's* House, he the said *Edward* did not once ask or desire the said *Catherine Elizabeth* to go with him home to *Lulworth-Castle*, or take any Notice, either to the Lady *Howard*, or the Lord *Aston*, or any of their Families, of any Intentions, or Desire he had of taking her with him, or of having her come to him there.

8. That

8. That the said *Catherine Elizabeth* continued at the said Lord *Aston's* House, with the Good-liking, Consent, and Approbation of the said *Edward Weld*, until his Return to her there, which was on or about the 18th Day of *February*, 1728; and the said *Edward Weld*, and *Catherine Elizabeth* did, during the Time of such their Absence from each other, correspond together by Letters, in a loving and affectionate Manner; and in some of the said Letters, the said *Edward Weld* did excuse himself to the said *Catherine Elizabeth* from such his Absence from her, and promised to return to her, as soon as he had settled his Affairs.

9. That for a Supply of Proof of the Premises, in the two foregoing Articles, and to all other

Intents and Purposes in Law whatsoever, the Party proponent doth exhibit, and hereunto annex, several original Letters, marked No. 2, 3, 4, 5, 6, which the said *Edward Weld* wrote and sent to the said *Catherine Elizabeth*, in the Time of such his Absence from her, mentioned in the two foregoing Articles ; and doth alledge, that the whole Series of all the said several Letters, marked No. 2, 3, 4, 5, 6, and the several Subscriptions thereto, and Dates thereof, to be all of the proper Hand-writing of the said *Edward Weld*, and so known and believed to be, by Persons who have seen him write, and are well acquainted with his Manner and Character of Hand-writing, and that the same were sent by him to the said *Catherine Elizabeth* ; and that by the Words, *My Dear*, wrote at the Top of the said several Letters, he the said *Edward*

Edward Weld did mean and intend the said *Catherine Elizabeth*, Party in this Cause.

10. That on or about the said 18th Day of *February*, 1728, the said *Edward Weld* came to the said *Catherine Elizabeth*, then at the said Lord *Aston's* House in *Hertfordshire*, and lived with her there at Bed and Board until on or about the 20th Day of *March* following, and did not at any Time, during the said Time, ask or desire the said *Catherine Elizabeth* to go home with him then to *Lukworth-Castle*, or mention the same, or shew any Inclinations of his intending to take the said *Catherine Elizabeth* home with him then to *Lukworth-Castle*, either to the said *Catherine Elizabeth*, or to her Father the Lord *Aston*, or to any of the Family, but promised to return again to the said *Catherine Elizabeth*.

Elizabeth to the said Lord *Aston's* House.

II. That on or about the said 20th Day of *March* 1728, and not before, the said *Edward Weld* left the said *Catherine Elizabeth* at the said Lord *Aston's* House, and went to *Lulworth-Castle*, and did not return to the said *Catherine Elizabeth* till on or about the 28th Day of *May* following; that the said *Catherine Elizabeth*, during such the Time of his Absence, continued at the said Lord *Aston's*, with the Good-liking, Consent, and Approbation of the said *Edward Weld*, until the Time of his said Return; and the said *Edward Weld*, and *Catherine Elizabeth*, during the Time of such their Absence from each other, corresponded by Letters in a loving and affectionate Manner; and in one of the said Letters which the said

Edward

Edward Weld wrote, and sent to the said *Catherine Elizabeth*, in such his Time of Absence from her, to wit, on or about the 16th Day of *April* 1729, and not before, he the said *Edward Weld* did propose, to the said *Catherine Elizabeth*, to be ready, in five or six Weeks Time, to go along with him to *Lulworth-Castle*, and in such Letter did propose to be with her at the Lord *Aston's* House aforesaid, before that Time.

12. That for Supply, of Proof of the Premises in the two foregoing Articles; and to all other Intents and Purposes in Law whatsoever, the Party proponent doth exhibit, and hereunto annex several original Letters, marked N^o. 7, 8, 9, 10, 11, which the said *Edward Weld* wrote, and sent to the said *Catherine Elizabeth*, in such the Time of his Absence from her,

and doth alledge, that the whole Series of all the said Letters, marked No. 7, 8, 9, 10, 11, and the several Subscriptions thereto, and Dates thereof, to be all of the proper Hand-writing of the said *Edward Weld*, and so known and believed to be, by Persons who have seen him write, and are well acquainted with his Manner and Character of Hand-writing, and that the same were sent by him to the said *Catherine Elizabeth*; and that by the Words, *My Dear*, wrote at the Top of the said several Letters, he the said *Edward Weld* did mean and intend the said *Catherine Elizabeth*, Party in this Cause.

13. That the said *Edward Weld*, on or about the said 28th Day of *May* 1729, came to the said *Catherine Elizabeth Weld*, alias *Aston*, then at the Lord *Aston's* at *Strandon* afore said,

aforesaid, and there continued with her till the 7th Day of *June* following, within which Time the said *Edward Weld* did ask the said *Catherine Elizabeth* to go home with him to *Lukworth-Castle*, and the said *Catherine Elizabeth* consented to the same, and agreed to go with him any Time he should think fit; and then the said *Edward Weld* and *Catherine Elizabeth*, on the 7th Day of *June*, went to the said Lady *Howard's* House in *Ormond-Street*, where they cohabited together at Bed and Board till the 29th Day of *June* following, and the said *Catherine Elizabeth* was duly in Expectation, all the said Time, of going along with him to *Lukworth-Castle*, and of his fixing a Time for their Journey; but the said *Edward Weld* did not at any Time, during the said Time they so cohabited together, at the said Lady *How-*
L *ard's*

ard's House, once ask or desire the said *Catherine Elizabeth* to go home with him to *Lulworth-Castle*, or fix any Time for their Journey; but instead of so doing, did, upon the said 29th Day of *July*, begin his Journey for *Lulworth-Castle*, without the said *Catherine Elizabeth*, and left the said *Catherine Elizabeth* at the said *Lady Howard's House*, and desired her to continue there till his Return to her in three Weeks Time, or thereabouts.

14. That the said *Catherine Elizabeth* cohabited with the said *Edward Weld* at the said *Lady Howard's House* in *Ormond-Street*, at the especial Request and Desire of the said *Edward Weld*, or, at least, by and with his good Liking and Consent, and continued at the said *Lady Howard's House*, and at the said *Lord Aston's* in *Hertfordshire*, until

until his Return to her, which was not till on or about the 17th Day of *November* following, with the like good Liking and Consent of the said *Edward Weld*.

15. That the said *Edward Weld*, and *Catherine Elizabeth*, during the said Time from the said 29th of *July* 1729, to the 17th of *November* following, did correspond together by Letters after a very affectionate Manner; and the said *Edward Weld*, in some of the Letters he sent to her during the said Time, did promise, from Time to Time, to return to her, and excused himself for not returning to her by the Time he proposed to her, when he parted from her.

16. That for a Supply of Proof of the Premises, of the Three foregoing Articles, and to all other Intents and Purposes in Law what-

foever, the Party proponent doth exhibit, and hereunto annex, several Original Letters, marked No. 12, 13, 14, 15, 16, 17, 18, which the said *Edward Weld* wrote and sent to the said *Catherine Elizabeth*, at or about the respective Times of the Dates thereof, and doth alledge, that the whole Series of all the said Letters, marked No. 12, 13, 14, 15, 16, 17, 18, and the several Subscriptions thereto, and Dates thereof, to be all of the proper Hand-writing of the said *Edward Weld*, and so known and believed to be, by Persons who have seen him write, and are well acquainted with his Character and Manner of Hand-writing, and that the same were sent by him to the said *Catherine Elizabeth*; and that by the Words, *My Dear*, wrote at the Top of the said several Letters, he the said *Edward Weld* did mean and intend

the

the said *Catherine Elizabeth*; Party in this Cause; and that the said Letter, marked No. 18, was wrote and sent by the said *Catherine Elizabeth*, on or about the 11th Day of *November* 1729, at which Time the said *Edward Weld* was at the said *Lady Howard's* House in *Ormond-Street*, and had been there for a Week, or nine Days, before, improving himself upon the Harpsicord, with the Assistance of *Mr. Lally*, a Music-Master, mentioned in the Postscript of the said Letter.

17. That on or about the said 17th Day of *November*, 1729, the said *Edward Weld* came to the said *Catherine Elizabeth*, then at the said *Lord Aston's* House, and continued to live with her there, and lay together, in one and the same Bed, *Solus cum sola*, & *nudus cum nuda*, till the first Day of *December* following,

following, and then the said *Edward* pretending to have Business in *London*, went thither, and did not ask the said *Catherine Elizabeth* to go with him, but promised to return again soon to her at the said Lord *Aston's* House; but not coming so soon as he had promised, did send a Letter of Excuse to her, dated upon the 9th of *December* 1729, and did not return to her till on or about the 20th Day of the said Month, and, from that Time, continued to live with her there till the 8th Day of *January* following, and lay in one and the same Bed, *Nudus cum nuda, solus cum sola*: That within the last mentioned Time, to wit, on or about the last Day of *December*, the said *Edward Weld* did tell the said *Catherine Elizabeth*, that he intended, in two or three Days, to go to *Lulworth-Castle*, and did then ask the said *Catherine Elizabeth* if
she

she would not go with him ; that she the said *Catherine Elizabeth* did not then refuse to go with the said *Edward Weld*, or tell him that she would not go with him to *Lulworth-Castle* ; but considering that it was in the Winter, and a bad Time for Travelling, she did ask him, *How he did think her Father would like it, or approve of her taking so long a Journey in that Season of the Year* ; and the said *Edward Weld* did not, after that Time, during his Stay at the said Lord *Aston's* House, mention any thing to the said *Catherine Elizabeth* about her going with him to *Lulworth-Castle*, or taking any Notice to the Lord *Aston*, or any of the Family, that he was desirous of having her go with him there.

18. That for Supply of Proof of the Premises in the foregoing Article, and to all other Intents

Intents and Purposes of Law whatsoever, the Party proponent doth exhibit, and hereunto annex the said Letter, dated the 9th Day of December 1729, marked N^o. 19, and doth alledge, that all the said Letter, Subscription thereto, Date thereof, and Supercription thereon, is all of the proper Hand-writing of the said *Edward Weld*, and so known and believed to be, by Persons who have seen him write, and are well acquainted with his Character and Manner of Hand-writing, and that the said *Edward Weld* did, on or about the Date thereof, send the same by the General Post, as directed to the said *Catherine Elizabeth Weld*.

19. That the said *Edward Weld* did, on or about the 8th Day of January 1729, leave the said *Catherine Elizabeth* at the said Lord *Aston's* House, and came to London
to

to the Lady Howard's House afore-
 said, where he stayed for three or
 four Days, within which Time the
 said Edward Weld did acquaint the
 said Lady Howard, that he was
 going to *Lulworth-Castle*, and had
 asked his Wife to go with him,
 who had given him no direct An-
 swer; and thereupon the said Lady
 Howard told the said Edward Weld,
 that, *She believed the Lord Aston*
had been with Counsel, advising
about his not having consummated
his Marriage, which might be the
Reason of her giving him no positive
Answer; and the said Lady How-
 ard did then tell the said Edward
 Weld, that, *He would do well if he*
would advise with Counsel also, con-
cerning the same; to which the said
 Edward Weld replied, that *There was*
no Occasion for That; for altho' they
 did not Bed or Lye together (mean-
 ing himself, and the said Catherine
 Elizabeth) they might live together

as Brother and Sister; and that was all he desired, as the said *Edward Weld* did then express himself, or to the same Effect and Purpose.

20. That during all the Time the said *Edward Weld* and *Catherine Elizabeth* lived together, and cohabited at the said Lord *Aston's*, and the said Lady *Howard's*, as in the preceeding Article is mentioned, he the said *Edward Weld* was received and entertained by them with great Kindness and Civility; and she the said *Catherine Elizabeth* behaved herself towards him in a very dutiful Manner; and he the said *Edward Weld*, some short Time before his going to *Lulworth-Castle*, as in the preceeding Article is mentioned, was very kindly invited by the said Lord *Aston*, as also by the said Lady *Howard*, to continue and live at their respective Houses

Houſes with the ſaid *Catherine Elizabeth*.

21. That ſoon after the Premises, to wit, on or about the third Day of *February*, mentioned in the 13th Article of this Allegation, he the ſaid Lord *Aſton* did write and ſend a Letter to the ſaid *Edward Weld*, then at *Lulworth-Caſtle*, and therein did again invite him to come and reſide with his Wife at his the ſaid Lord *Aſton's* Houſe, where he might have a more eaſy Recourſe for the beſt Advice and moſt proper Remedies, to enable him to conſummate his Marriage, than he could have at *Lulworth-Caſtle*, being ſo great a Diſtance from *London*, or the ſaid Lord *Aſton* did write and ſend a Letter to the ſame Effect to the ſaid *Edward Weld*; which Letter the ſaid *Edward Weld* did receive, but the ſaid *Edward Weld* did not ſend any

Answer to the said Letter to the
said Lord Aston.

22. That in or about the Month
of June 1729, the said Edward
Weld being sensible of his own
Inability to consummate his Mar-
riage, did, in Discourse with the
said Catherine Elizabeth, tell the
said Catherine Elizabeth, that, It
would signify nothing to advise with
Surgeons or Physicians, for that, in
another Year, they must part Beds
(meaning thereby, when Three
Years after the Time of his pre-
tended Marriage were expired) at
which the said Catherine Elizabeth
being much surpris'd, said, *What,
part Beds!* He the said Edward did
make Answer, that, *They could not
in Conscience do otherwise,* or ex-
pressed himself to the same Effect
and Purpose.

Answer M A N



A N

ALLEGATION

GIVEN INTO

The Court of *Arches* on
Behalf of EDWARD
WELD, Esq; *July* 14,
1731.

I. **T**HAT *Edward Weld, Esq;*
Party in this Cause, is a
Person of the Age of twenty-six
Years, and has all the Parts of his
Body which constitute a Man per-
fect and intire, and more particu-
larly those Parts which Nature
formed and designed for Propaga-
tion of his Species, and the Act
of carnal Copulation, in full and
just

just Proportion, and was and is capable of carnally-knowing the said *Catherine Elizabeth Weld* his Wife, or any other Woman, and so much the said *Catherine Elizabeth Weld* knows and believes to be true.

2. That within the Space of twelve Months, or thereabouts, after the Solemnization of the Marriage between the said *Edward* and the said *Catherine Elizabeth*, she the said *Catherine Elizabeth* being out of Order, as breeding Women usually are, did seriously, and in a grave Manner, say and declare to *Margaret Weld*, Mother to the said *Edward Weld*, and others, That she did not know, for certain, whether she was not a *Breeding*.

A N
ALLEGATION

GIVEN INTO
The Court of *Arches*, on
Behalf of Mr. WELD, the
3d of Nov. 1731.

I. **T**HAT during the Time
mentioned and set forth
in the second Article of an Alle-
gation given in, and admitted, on
the Part and Behalf of the Party
proponent, *Edward Weld, Esq;* in
this Cause, and also in the fourth
Article of the Libel, given in, and
admitted in this Cause, on the
Part and Behalf of *Catherine Eli-*

zabeth

zabeth Weld, the Party in this Cause, the Privy-Members of the said *Edward* were often turgid, diluted, and erected, in such Manner as is usual and necessary to perform the Act of carnal Copulation; and so much was observed and taken Notice of by, and well known to the said *Catherine Elizabeth*, the Party in this Cause; and the said *Edward* did, at all such Times, endeavour to consummate his said Marriage, and did, several Times, consummate the same, by carnally-Lying-with, and Knowing, the said *Catherine Elizabeth* his Wife.

N. B. This *Fact* the LADY denies. Her *Answers* to all her Husband's *Allegations*, are in the former Part of these Proceedings, published by me,

JOHN CRAWFURD.

F I N I S.

Printed by Authority, the Second
Edition of

THE CASE OF
ELIZABETH FITZ-MAURICE,
alias **LEESON,**
AND THE
LORD WILLIAM FITZ-MAURICE,

concerning Divorces for Impotency. 3. A
Dilection, showing what are the Real
Proofs of Impotency, and demonstrating
that there are not any certain Signs of
Impotency in Woman; but that all the
pretended ones, may be checked by Art.
By Thomas E. Curran. Price 2s. 6d.

[Price One Shilling.]

*Just Publish'd, by Authority, the Second
Edition of,*

THE Cases of IMPOTENCY and VIR-
GINITY fully Discuss'd. By *John
Crawfurd*, L L. D. Being the Genuine
Proceedings, in the Ecclesiastical Court,
between the Hon. *Cath. Eliz. Weld*, alias
Alton, (Daughter of the Lord *Alton*) and
her Husband *Edw. Weld*, Esq;. The
Lady affirms, I. That the said *Edw. Weld*,
her Husband, by Reason of his Frigidity,
Impotency and Insufficiency, hath not (in
three Years Cohabitation) been capable of
knowing (her as) a Woman carnally; for
which Cause she did refuse to cohabit with
him any longer. H. Their several Answers
to each other; the Examinations of Wit-
nesses, and the Affidavits of the Surgeons
and Midwives appointed to inspect each
Party. III. An Account of the Tryal,
and Sentence pass'd. With three curious
Pieces, viz. 1. The Invalidity of an un-
consummated Marriage. By *Dr. Fleet-
wood*, late Bishop of *Ely*. 2. The fa-
mous Decree of Pope *Innocent III.* con-
cerning Divorces for Impotency. 3. A
Dissertation, shewing what are the Real
Proofs of Impotency; and demonstrating,
that there are not any certain Signs of
Virginity in Woman; but, that all the
pretended ones, may be effected by Art:
Printed for *E. Curll*. Price 2 s. 6 d.

LOVE and ARTIFICE:
OR, A
Compleat HISTORY
OF THE
AMOUR
BETWEEN

Lord Mauritio and Emilia.

BEING THE
CASE of *Elizabeth Fitz-Maurice*,
alias *Leeson*, and the Lord *William Fitz-*
Maurice, relating to a MARRIAGE-CON-
TRACT between them; which was confirmed
by *A Court of Delegates*, in the Lady's Be-
half, on *Wednesday, March 14th 1733*, at
Serjeant's Inn, in Chancery-Lane.

LORDS, Titles, Deeds, and Rent-Rolls only Wed,
Whilst the best Bidder mounts their venal Bed;
And the grave, busy, Mother must approve
This Nuptial Sale, this Auction of their Love.

L. W. Mont.

THE SECOND EDITION.

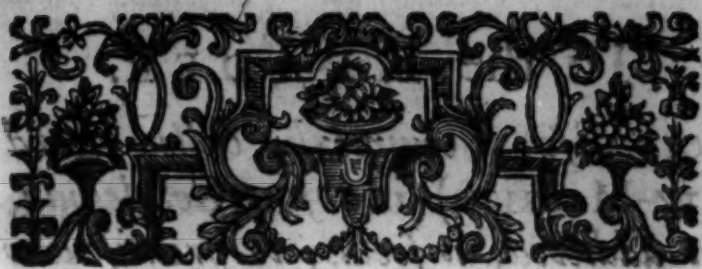
L O N D O N:

Printed for E. CURLL, in *Burghley-Street*, in
the Strand. M.DCC.XXXIV.

This tract is misbound it should

follow 518 c. 21 as it is included in
the General 518 c. 21
4.





TO THE
READER.



THE Amour between these
TWO LOVERS, was be-
gun and carried on with
the utmost Secrecy; till
Nature made that Dis-
covery, the Legitimacy of which to
the Lady's Honour, the Law has now
fully Confirmed.

ELIZABETH LEESON, the Ap-
pellant in this Cause, is a very agree-
able, brisk young Widow; and the
Respondent, WILLIAM FITZ-MAU-
RICE,

TO the READER.

RICE, *Esq*; (commonly called Lord FITZ-MAURICE) is a fine Gentleman, but addicted, it seems, to promiscuous Love.

He is eldest Son of the Earl of Kerry, of Lixnaw in that County. And his Mother would fain have represented this Serious Amour on Mrs. Leeson's Side, as a Piece of loose Gallantry only, on the Behalf of her Son; but the solemn Promises and other overt Acts of the Lover to his Mistress, (which have been a meer Game at Tennis for above these six Years in the Ecclesiastical Courts of Ireland and England) are at length rendered Indissoluble.

These Papers have lain Dormant some time, and are now faithfully Published as they were transmitted to her Grace, the late Dutchess of Monmouth, who after Perusal, returned them to the Writer at her Request.

To

TO the READER.

To some, the feigned Names may appear with the Air of Romance; so that the Reader ought to be told, the Lady always subscribed her Letters, to prevent a Discovery, by the Name of EMILIA. For which Reason, MAURITIO is not an improper Appellative for his Lordship; nor Carrioli, for Kerry, the Name of his Country.

Thus much is sufficient to realize the following Narration.

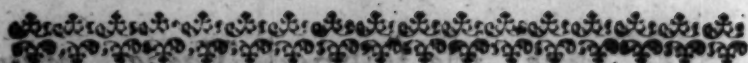


ERRATA.

Page 47. Line ant penult, read thus, viz.
She imagined that *she* rested, &c.

Page 34. Line 5. read, part Us;

To the R E A D E R.



CLAVIS.

PAGE 24. *Line 6.* Miss *W.* and
Miss *H.* i. e. Miss *Ware* and Miss
O'Farrel.

Page 31. *Line Ant. Pen.* Sir *H. P.*
i. e. Sir *Harry Pierce.*

Page 38. *Line 20.* Lady *Carrioli.* i. e. The
Countess of *Kerry*, Lord *Fitz-Maurice's*
Mother.

Page 39. *Line 12.* Our *Viceroy.* i. e. The
Lord *Carteret.*



A T A

To

To Mr. C U R L L,

S I R,

New-Year's-Day, 1734.

SINCE you have published an Account of Lord *Fitz-Maurice's* Amour with Mrs. *Leeson*, I can guess no other Reason, why you did not print his *Lordship's* Letters as well as the *Lady's*, except this one, that, perhaps, a Copy of them did not come to your Hands: To supply which Defect, you receive the inclosed, which you may depend on for Genuine. Perhaps, the Lady, who thought *Emilia's* Letters worth communicating to the Dutcheß of *Monmouth*, might not be equally affected with the rough Soldier's Stile: But, coarse as it is, a discerning Eye may discover (especially in the earlier Part of his Correspondence) strong Emotions of Love, Tenderness, and Compassion: Indeed, after he had got the Lady, and could not get rid of her, the Scene is changed. It would be unfair to criticise on *Mauritio's* Letters, by comparing them with *Emilia's*, since, in him, we see a Lover in Possession of all he aimed at: In her, a Lady who had gone too far, if she could not find herself able to advance one good Step farther: Tenderly she must write, pathetically complain of her

iv Lord Fitz-Maurices's Letters

her Sufferings, to reclaim her wandering * *Demophoon*; and, doubtless, that *Pathos* has had its Use in the Progress of the Cause: Which you may inform the Publick is to be again re-heard before the Delegates, under a Commission of Review.

I.

To Mrs. L E E S O N.

MY DEAR,

Sept. 10, 1725.

I Received Yours, and am much grieved that I should be the Cause of your melancholy Thoughts and Hours. I assure you, I was in no need of a Letter of that Stile, to make my Uneasiness equal to yours. I pity you, and myself, the Cause. I pity you, for what you suffered; and myself, because I can't make my self really happy in dear *Emilia's* chaste Embraces. I hope soon to see you, and wish I could get a Lodging near you; our own House being uneasy to me, till the Master is in it. I once thought of Mrs. *Pain*; but lest it should give you Jealousy, I shall think no more of it. If you can, find out some Place for me, which you can say is for a Lady of your Acquaintance: I would have it a Ground Floor, and as cheap as possible. I don't desire

you

* *Demophoon ventis & verba & vela dedisti.*

Or. Ep.

to Mrs. LEESON. v

you to take it, but to find out such a Lodging for me against my Arrival. If I come alone to Town, I shall send you Word the Day I shall be in Town; and if you have the Eagerness I have to see you, you will meet me on the Road, between Rathcool and Dublin. If you want Company, you may get Miss *WARE; she shall see the Preference I give to my dear Emilia.

I am Yours.

II.

To Mrs. LEESON.

1726.

SEE you I will, tho' the Devil stood at the Door; and that I believe you innocent of all that is laid to your Charge, was always my Sentiment; but, as you said, your simple Mother, your talkative Sister, and your old Friend, Mrs. Pooley, have done your Work. If you are impatient to see me, call on me, in a Coach, at the Corner of Crane-Lane, near Cork-Hill, or else I can't come till Night-fall. I own I love you, in Spight of all the ill Consequences that has attended Their malicious Reports, Adieu dearest Eliza. If you would have my Visit

Miss WARE was certainly much obliged to his Lordship.

vi *Lord Fitz-Maurices's Letters*

Visit long, let me hear or see no Tears, but
bear, * what can't be help'd, with Courage and
Resolution.

Mrs. *LEESON's* first LETTER
to Lady *KERRY*.

MADAM,

May 12, 1726.

MY Lord Fitz-Maurice came last Night
to see me, and told me he was concerned
that it must be his last Visit. When I asked
him the Cause, he told me, that your Lady-
ship had been informed, by the Report of the
whole Town, that his Lordship was Married
to me; and lest such a Report should do him
any Prejudice with the Lord, his Father, or
your Ladyship; I think, in Justice to him, I
must acquaint your Ladyship, I have no
Thought of that Honour, nor do I expect it.
Pardon this Trouble, since it is to do Justice
to my Lord Fitz-Maurice, and give Ease to
You.

I am, Madam,

Your Ladyship's most humble,

and most obedient Servant,

E. LEESON.

Well said Epictetus, and Horace after him.

Levius sit Patiendo,

Quicquid corrigere est nefas.

To

to Mrs. LEESON. vii

III.

To Mrs. LEESON.

May 9, 1726.

I HAVE been just now with Lady *Kerry*, who shewed me your Letter; to which I pleaded Ignorance, till she said that Letter had two Meanings. Then I confessed that it was my own Draught. Therefore, to my farther Content, and to make a stedfast Friend of Lady *Kerry*, who, I am sure, would take Pains to vindicate your Reputation, which your Mother has destroyed, I beg you, in Pursuance to my Request, write this following Letter to her, viz.

MADAM,

Having been informed, &c.

P. S. Pray be exact in the Copy of this, and keep your Mind easy till I can see you, which shall be as soon as possible.

I am Yours.

IV.

May 18, 1726.

PRAY copy the Letter I gave you, and do it exactly. Do not leave one Word out, but copy it with Care. Do this if you expect I should ever see you, and send it as soon as possible.

I am Yours.

I beg no Excuse, or Delays; for I lie under the greatest Uneasiness. My Mother believes I deceive her, because *the Faith of a Christian**, is not in it; so pray do it instantly, if you value me, or my Repose. What I writ to you this Morning was but a Jest; so do not play the Fool. Send what I desire instantly, and then I shall be able to dine with you to morrow. Send me Word if you will do it.

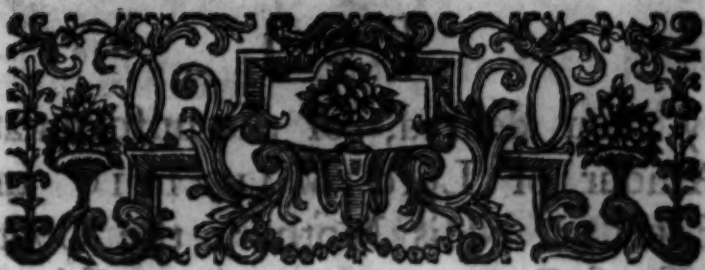
Mr. CURLL,

These, are all the Originals which are wanting to your Collection.

I am, Sir, Yours,

S. J.

* These Words, it seems, *on the Faith of a Christian*, should have been in Mrs. Leeson's first Letter to Lady Kerry. But they are in her second Letter, herein referred to, and beginning, *Madam, Having been informed, &c.* as the Reader will find, p. 42.



TO HER
GRACE
THE
DUTCHESS of M*****

MADAM,

I Tis easy to believe that the
Correspondence you honour
me with cannot slacken on
my Part, till I shall be so unhappy
as to understand that it is no longer
acceptable to your Grace. I have
waited a Fortnight to receive the fol-
lowing Copies of Letters for your
Entertainment, because they are of
the utmost Importance in the Histo-
ry,

ry, you desired, of the unfortunate Amour of Lord MAURITIO and EMILIA. His Mother, the Countess of CARRIOLI, was as assiduous in this Country, as you describe her at present, to defeat an Engagement so destructive of all Hopes, that could be found either in Avarice or Ambition; but her Success, it seems, on your Side the Water, has not been answerable to the flattering Hopes which were excited in her at Home.

I PROCEED, in Obedience to your Grace's Commands, to communicate all I have been able to learn of this perfidious, and yet instructive Story; which, taken in a proper Light, may afford useful Lessons, as well to the designing, as the unwary of both Sexes.

WHEN Lord *Mauritio* first beheld *Emilia*, she was the Widow of a private Gentleman, by whom she had a Child

Child living; her Support was a Jointure of about 150 *l.* a Year; her Family was reputable; she had a fair Character; and kept good Company; She was about 28 Years of Age, was agreeable in Conversation, and, tho' low in Stature, yet many thought her a brown Beauty.

His Lordship was the eldest Son of an Earl, descended from one of the most ancient Families of Peerage; was Heir to an Estate of about 5000 *l.* a Year, which, however, his Father might incumber to the Value of 30000 *l.* He was about 30 Years of Age, had been Abroad to see the World, was once a Colonel in the Guards, was, and still is, Governor of a small Fort in his Country, had chiefly the Education, and pursued the usual Pleasures of a Soldier, being abundantly too fond of Wine, and addicted to promiscuous Love. He is tall of Stature, well made, brave,

A 2 pleasant,

pleasant, good-natured, honourable in his Engagements; (except those with our Sex) he is somewhat hard-featured, which is chiefly owing to the Small-Pox: He has long been afflicted with the Dead-Palsy on one Side, which makes his Speech difficult to be understood, and detracts from the graceful Motion of a well-formed Body.

THIS his Lordship's Infirmary afforded Occasion to our late Archbishop,* to make a two-edged Observation on this Amour: An Observation, by which he inferred the Reality of a Contract against his Lordship, and at the same Time vented his Satire upon the Arts, and a certain natural Appetite, of our Sex. After this long Suit was commenced in his Grace's Court, the Countess of *Carrioli*, who is a most importunate Solicitrix, waited on the good Prelate, and

* The Learned Dr. KIRK, Archbishop of *Dublin*:

and endeavoured to persuade him that there was no Foundation of a Contract, that the whole was only a Piece of loose Gallantry, and that *Emilia* had occasionally cooked up a Set of Evidence upon an after-Thought; to prevent the wretched Consequences of her having abandoned herself to the Gratification of her wild Desires.

My Lady, my Lady (quoth the Prelate) *I shall not easily be convinced, that a young and experienced Widow, and (as you represent her) amorous, would pitch upon a Lame, Paralytick Lover, if she went only upon the Choice of a Gallant.* But what better Quarter could we expect from an old Bachelor, a Woman-hater, in the 80th Year of his Age.

LORD *Mauritio*, in July 1724, landed in *Dublin*, and in a few Days met *Emilia* at a Visit at Mr. *Ware's*: this was their first Interview. His Lordship, we may imagine by the Sequel,

Sequel, was smitten with her Conversation, or some nameless Grace, which Lovers can more easily discover than describe: Nor are we to suppose that the Lady was wanting in artificial Allurements, when she found herself honoured with the Addresses of a young Man of Quality, Heir to an Earldom attended with a fine Estate, for so we esteem it in this poor Country: She doubtless played all the pretty Tricks over and over, which she thought most engaging, and most likely to place her favourite-Charms in an happy Attitude to strike the Imagination of our amorous Hero. Whether *Emilia* flattered herself that one Day she should be Countess of *Carrioli*; and Lord *Mauritio* early entertained hopes of Conquest, by the Means of false and broken Vows; or whether both gave a Loose to Love without reserve, and the melting Nymph surrendered without any Capitulation, your Grace will conjecture

jecture from the subsequent Appearances. This much is certain, his Lordship attended *Emilia* to her House from this first Meeting; but when and how often, within a Month afterwards, he waited on the Fair one, what Promises, what Vows he made, what Oaths he swore to gain her Affection, and overturn her Resolution, may be guessed from the following Letter, which she wrote to him within a Month after their first Acquaintance. He was, at this Time, got into his own Country, at the Distance of 150 Miles from our Metropolis.



To

To the Right Honourable the
Lord M—— at C——

August 1724.

HOW can my dear Lord accuse me with Fickleness; Me, who have given all the Proofs imaginable of a sincere Affection! You ought to have allowed something to the natural Pride of my Sex. What Thoughts could I have, when in a Fortnight's absence I did not hear from you? I thought you false, and have not known one easy Minute since, till last Night, that I received yours. Forgive my Fears, and judge by me how restless and impatient Women are when they begin to love. I often told you, that I was a Stranger to that Passion, till I knew your Lordship: I wish I could believe you were
so

so till you knew me ; as I have no Reason to think that I ought, rather, to doubt the Sincerity of a Man, who has been so often in Love. As for my Part, assure yourself, no Consideration (while you prove true) shall make me change. Nay, should you be false (which Heaven forbid) you know my Niceness well enough to believe, none but yourself shall ever have the Hand or Heart of

EMILIA.

P O S T S C R I P T.

My Sister gives her Service to your Lordship, and says, a Line from you would be much more acceptable than a Kiss : Since the One she would look upon as a Token of Friendship she should be very proud of, the Other is

B

what

what no married Woman ought to receive. If you love me, I need not desire you to let me hear from you every Week, since I know, by myself, you will be impatient for my Answer; and let the Love you have for me continue to keep your Body chaste; and do not forget to let me know how you spend the Half-Hour every Day you promised to devote to me.

EMILIA.

EMILIA.

POSTSCRIPT.



My Sister, I have just received your Lordship's and says, a Line from you would be much more acceptable than a Kiss: Since the One the world look upon as a Token of Friendship the Other is very proud of, the Other is what

We are at a great Loss for want of the preceding Correspondence: It is plain, *Mauritio* had accused the Lady of Inconstancy; which Charge was not very probable, if *she had given all imaginable Proofs of Affection*. In such a Case the Naturalists hold the Man the more variable Creature, more *variable* even than a *Woman*. But it seems they had not yet surfeited of Love.

I MUST own this Epistle has a good deal of the Air of a brisk young Widow; and (if she had not so often affirmed the Contrary) one might have been apt to guess her *no Stranger to the Passion of Love*. But it seems, however, she well understood something belonging to it; for she here interests herself on the Account of his Lordship's Virtue, in Terms very little affected or reserved.

By the Postscript, one might be induced to believe *Mauritio* had a Mind to go round the Family; but the Sister is a Woman of Honour, and I doubt not *Emilia's* hearty concurrence in establishing her in that Principle, since it gave her the better Chance of keeping her Gallant wholly to herself.

IN Answer to this, he probably gave her such warm Assurances, as an Epistolary Correspondence was able to convey; for in the next of her *Letters*, which is come to my Hands, she appears very much in Earnest; with that Mixture of anxious Jealousy, which cannot fail to take Place, where a Woman Loves, and at the same Time, knows her Lover to be remarkable for Inconstancy; it is as follows, 772.

To



To the Right Honourable the
 Lord M— in the County
 of C—

Sept. 1st. 1724.

THIS is the Third Letter I have
 writ since this Day Fortnight,
 to which I have received no Answer;
 and yet I do not accuse my dear Lord
 of Negligence; for I find you write
 every Week, but rather impute it to
 the Post-Boy's being five Days upon the
 Road; for it is just that Time before
 I receive yours: and tho' I was up all
 Night with Mamma, yet I would
 not fail to be punctual in Answering,
 for fear of giving you any Uneasiness.
 You see how cautious I am of dis-
 pleasing you; and I beg you would
 do me the Justice to believe, if you
 spend whole Hours in thinking of me,
 my

my Time is not much otherwise employed: and tho' this very Evening I have heard a very indifferent Character of you, in relation to Women: yet that has not lessened my Esteem: Nor is it in the Power of any one breathing, but yourself, to do it: So that the intire Confidence that I put in you, ought, if you have any Gratitude, to tye you; tho' that I fear, will be but a poor Plea when once Love is banished; as, I fear, Absence, Diversions, and the Persuasions of Friends will occasion; for I have not so much Vanity to believe you can Resist for my Sake. Forgive my Fears, and, to convince me they are causeless, give me new Assurances in your next, that you will be for ever mine: and assure yourself, while you are constant, nothing can ever change the Inclinations of

E M I L I A.

THE Lady, at this Time, either suspected, or her foreboding Genius presaged *Mauritio's* Inconstancy. She calls upon him for new Assurances in writing ; it is plain, he was not to be caught with Chaff : had those Assurances been given, I should have been able, by this Time, to have sent your Grace the Copies of them.

WHAT happened in their Correspondence between this Letter, and the 13th of *October* following, I cannot account for ; it seems *Mauritio* in that Time began to tire of his Amour, tho' he had only the Fatigue of a Correspondence with a fine Woman, at a Distance : But his Sham - Pretences are easily detected and set aside. Even our little City of *Dublin* is wide enough to hide a Secret in, if People use a little Discretion. I believe your Grace laments with me the Suppression of his Lordship's Epistle, in this Place, which contained

contained his *wise Reasons*, for re-
treating betimes. Perhaps the 30000 *l*
in his Father's Power, might be one
Consideration. *But this (says Emilia)*
is what Love would have overlooked.

HER next Letter is full of Spirit, and
of Ambiguity: it is much Love, much
Indignation, and All a Riddle.



To



To the Right Honourable the
 Lord M—— at L—— in the
 County of C——

October 13, 1724.

THAT unkind, cruel Letter,
 wherein you threatened to
 shake off Love, for fear of undoing
 me, heightened my Pears so much,
 that I cannot express my Concern for
 not hearing from you as usual. But
 whither am I running? You again
 say I mistrust you, and *that* you cannot
 forgive: But do you consider what
 occasions it? I am ashamed, after the
 Coolness you have shewn, to own it
 is Love. But what else can make
 me every *Friday* (which is the Day I
 receive your Letter) watch the Door
 with so much Impatience, and be so
 C uneasy

uneasy when you omit writing? What adds to my Uneasiness is, that every Body knowing me to be of a chearful Temper, I am forced to feign Mirth when my Heart is a Stranger to it. I cannot but think you would pity me, if you knew the Uneasiness I am under when you miss a Post; and that your Care of my Reputation may not hinder you from writing constantly, let a feigned Name conceal our Correspondence: The People cannot think your Passion very violent, when you take Care to write so very seldom; for you have been away three Months, and have writ but eight Letters, and the two last, filled with wise Reasons which Love would have overlooked: But do not be uneasy, I will follow your Advice, and be contented with what Proofs you are willing to give; for I have called Pride to my Aid, and will never sue again to be denied. But I must desire you to have a better Opinion, than

than to believe any Misfortune, had you consented, could have made me curse you. No, I should have thought myself too happy. Let us suspend all Discourse of that Nature till I see you ; and, in the mean Time, let me beg you to write with a little Tenderness, that I may not think Absence has lessened your Esteem: Rather endeavour to convince me that Time, nor any Thing but my Change can occasion yours ; and then I am sure you will ever be constant to

EMILIA.

P. S. DIRECT for Mr. S-- H-- at my Brother's, and I will give Orders to my Sister to receive it. She gives her Service to you, the Reason she does not answer yours is, she writes so sadly she is ashamed ; for it is really a true Woman's Scrawl ; which I am afraid you will think this to be, for it is writ in a hurry.

I CANNOT apprehend what *Emilia* had *sued for*, unless it was Matrimony; and if that was denied her, happy had she been if she had rejected all *other Proofs* of his Passion; but it was in the Fates she should court this vexatious Engagement: She was now so closely wrapt up in her fond Scheme, that she cannot help contributing to deceive herself: She conjures him to *make use of kind Language in his Letters, that she might enjoy the enchanting Delight of being cheated!* Surely there is an Infatuation, innate, in multitudes of our Sex, which leads them to believe and delight in Vows, tho' the Men almost universally agree in this Principle, That Heaven laughs at the Perjuries of Lovers.

IN November, 1724, His Lordship came to Town for the Winter; and now indeed she finds the Completion of her Joys, and at the same time plays the Overture to an extended

Scene

Scene of Sorrows. This is the Month in which she pretends her Effectual Contract, the Contract she relies on, was made; made with the Solemnity of a Ring, and in the very Words of the Office of the *Common-Prayer* Book. To this, and the Consummation of it, she produces her Maid-Servant for an Evidence. The Verity of the Contract I am willing to leave to proper Judges; but to the Truth of the Consummation Nine revolving Moons produced a second Witness, which is taken Notice of in the next of her Letters that is come to light: it is written to his Lordship (again at his Country-Seat) so late, in Point of Time, as the *July* following.

To

To the Right Honourable the
 Lord M—— at L—— in the
 County of C——

July 3^d, 1725.

WHO can describe the Agony
 I endure? No, it is impossi-
 ble to express it; tortured both in
 Body and Mind, without a Possibility
 of Relief, I had no other Hopes but
 in your Compassion, and those are
 fled. Reflect how often I have told
 you this would be the Consequence,
 and how often you assured me I should
 never suffer. With what Assurance
 can I trust any Friend with their and
 my Infamy? What Excuse can I make,
 or how lessen my Shame? If I go in-
 to the Country, the Place, I go to,
 must either be known, or else the con-
 cealing

cealing of it will unavoidably confirm
 Suspicion. As for feigning a Quar-
 rel with Mamma, she has redoubled
 her Kindness, seeing me so melan-
 choly, and so often, so extravagantly,
 ill, that it is a Thing not to be done;
 and I could much easier stab myself
 than acquaint her with it. And as
 for trusting my Sister, she would cer-
 tainly tell her Husband: Besides, how
 often has she heard you talk to me as
 if you intended to deal honourably,
 and protest you would suffer any thing
 rather than do me any Injury: Nor
 could I bear the Sight of any one af-
 ter owning it. I cannot tell what to
 do, or where to fly. O! my dear
 Lord, think of the Condition you
 have reduced me to; tho' Fool as
 I am, to think you would hurt your-
 self for one who has already given
 all she had to give. Were the Report
 of the Town true, no Misfortune, no
 Infamy but I could bear, for then I
 should be certain you could not be
 another's,

To the Right Honourable the
 Lord M—— at L—— in the
 County of C——

July 3^d, 1725.

WHO can describe the Agony
 I endure? No, it is impossi-
 ble to express it; tortured both in
 Body and Mind, without a Possibility
 of Relief, I had no other Hopes but
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 to the Country, the Place, I go to,
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cealing of it will unavoidably confirm
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 tainly tell her Husband: Besides, how
 often has she heard you talk to me as
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 and protest you would suffer any thing
 rather than do me any Injury: Nor
 could I bear the Sight of any one af-
 ter owning it. I cannot tell what to
 do, or where to fly. O! my dear
 Lord, think of the Condition you
 have reduced me to; tho' Fool as
 I am, to think you would hurt your-
 self for one who has already given
 all she had to give. Were the Report
 of the Town true, no Misfortune, no
 Infamy but I could bear, for then I
 should be certain you could not be
 another's,

another's, and that Thought is one of my greatest Plagues. Whether that Report is occasioned by my Illness, I cannot tell; for it is increased since you left Town; for, but Yesterday, Miss *W*--- and Miss *H*--- seeing my Colour change very often, and I like to faint, fell a laughing, and told me they did not pity me; for they no longer doubted but I was yours, and that it was occasioned by a breeding Qualm. You may easily guess my Confusion, and how earnestly I denied it. But it has put into my Head a Thought which if ever you have any intention to restore me to the Esteem of the World, you will not be against; It is, that Those whom I am obliged to trust, may, if they please, believe it. But even *that*, without your Consent, shall never be done by me: Tho' if it lies in your Power, while living, or if (which GOD forbid) I should ever see you at your dying Hour, you should think fit to do

as

as you say you will, their believing of it will be a great Advantage to your Design. But this I leave entirely to your Pleasure: and if you can think of any way to make me easy, hasten the doing of it. I conjure you by all the Ties of Love, Humanity, Honour and natural Affection; and by your Hopes of Pardon Hereafter, think of the Miseries I endure, and pity me and yours. Your Brother is my most constant Visitor; he tells me you do not come till *September*, which if true will make me desperate. I beg you would make what haste you can, for tho' the Consequence be my Death, I will conceal it till you come. If it should be my Fate, let me go to the Grave with the Glory of being yours, and that will make my last Minutes easy. O! could you see me this Minute, how terrible would the Sight appear! I am not able to write any more. Having a little recovered myself, I do assure you I will follow

D

your

your Directions, and after this Letter never mention any thing, which, if an Accident should happen, shall give you any Disturbance, or occasion that dreadful Threatning of never seeing you more.

E M I L I A



THIS

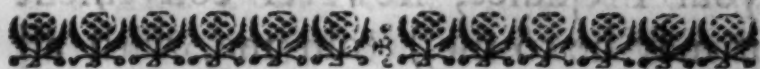
THIS pathetick Description of *Emilia's* Condition, ought to be laid before all our Sex at their setting forward into the World. I believe your Grace finds your Compassion called upon as you read it, and it may employ *even your* nice Discernment, to judge by the Style how far she had trusted. It is certain his Lordship's Lawyers here laboured to have it understood as the clearest Confession on her part, that she had not him fast under any binding Engagements; but a shining Advocate on her side contended strongly, that every Syllable in any of the Letters is reconcilable with the Contract alledged on her behalf, and that all the Expressions which imply a doubt of her right in her Lover, as an Husband, are fully to be accounted for by her Ignorance in the Canon-Law, because she imagined that rested merely on *Mauritio's* Parole for the Certainty

of carrying her Contract into a solemn Execution in the Face of the Church. I am at present of Opinion with Sir *Roger de Coverley*, that there is much to be said on both Sides; but shall be better able to fix my Judgment when I shall have the Honour to know your Grace's Sentiments on this Subject.

Emilia's next Epistle that is come to my Hands, is six Weeks later than the last, and much shorter; which probably is occasioned by the Condition we now find her in. Be pleased to take it in her own Words.



To



To the Right Honourable the
 Lord M—— in the County
 of C——

August 17. 1725.

IT is a surprising thing that you forget Humanity so far, as to be so long without writing to me. Is it not enough to have you absent from me while I am in this miserable way, but I must be tormented with the Fears of your neglecting me! Hasten to Town then, my dear Lord, and dispel them; save me from the Insults I endure.

My Brother, after examining me the other Day, whether the Report of the Town was true in relation to my being yours, and I denying it (for I am resolved not to do any thing to
 your

your Prejudice, however convenient it may be to me,) told me, with all the Insolence of a *Spaniard*, that my talking of going out of Town being prejudicial to my Reputation, he would wring my Neck about if I attempted it; and that, for his part he should be convinced there was nothing base but I had been guilty of; nor should I screen myself from Rproach and Infamy by it. What can I do? Stay, or Go, I am ruined. Make haste, or it will be too late to help me. At this present, the Stitches and Pains I endure by being obliged to conceal it, cannot be equalled by any thing but the Disorder of my Mind; it is so violent, I can hardly bear it, and am forced to send out for one to bleed me. No Proofs of Love you could desire have I denied; it is *Your* turn now to give some to the most unfortunate of her Sex. I beg by the next Post you would let me know when you come up.

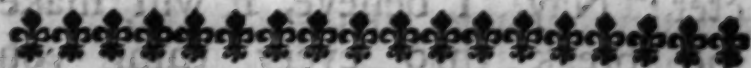
E M I L I A.

HERE Your Grace will observe the plot thickens: On the one hand, Nature begins to call upon the too-believing Dame; and on the other, her Brother examines her Pretence of a Jaunt into the Country, by comparing it with the common Fame of the Town, in relation to her. His Resolution, on this occasion, is certainly becoming the Honour and Gravity of a *Spaniard*; he will have all fair and above-board. Seriously, this Behaviour to his Sister has in it the Wildness of a jealous Husband. He is so concerned for the Honour of his Family, that he would prefer a *certain Infamy* to a *doubtful Rumour*! Such Dupes are Men to their Passions, that in their Rage they labour to proclaim that Secret which they would retract at any rate, when Reason reassumes the Rein. Of this impetuous Temper was Sir *H-- P--* He published to his Chaplain, and whole Family, with
 furious

furious Exclamations, that *He had caught his Daughter in Bed with his Butler*: The *Doctor* was not very good at a Secret, but made his Court with it the next Day at a neighbouring Gentleman's; and in less than a Week the Baronet had not only dismissed the *Doctor*, and denied the *Story*, but, in Miss's behalf, had also commenced a Suit against him in the *Spiritual Court*, for Defamation.

BUT, to return to *Mauritio* and *Emilia*. It seems these importunate Letters had somewhat embittered his Lordship's Spirit; for, in consequence of a Correspondence of Expostulation, on both Sides, the following Epistle seems to be written. It is without a Date; but, in all likelihood, belongs to this Period of Time; as Your Grace will perceive by perusing the Contents.

To



To the Right Honourable the
 Lord M—— at L—— in the
 County of C——

I Have just received my dear Lord's Letter, in which I own there is a Tenderness that makes amends for some Expressions in your last. I beg you will not take notice of any foolish ones in mine, but when you meet with what may vex you, impute it to the uneasy, unhappy Condition I am under; which often increases by the Stories I hear. My dear Lord promises to Love me as himself while Reason is my Guide; but you know too well that I have lost that, and Love is my only Director. That (if you would give me leave) would make me contemn even common Decency to live with you in any Character:

E.

ster: Nay, I believe, it will make me break thro' every thing you have promised to keep Secret; for I assure my dear Lord, nothing but Death shall part; only when there is a Necessity, remove me out of this odious Town. I hope this Promise will convince you, that I value nothing but your Satisfaction, and that I am without any interested Views entirely Yours.

EMILIA

P. S. My Sister gives her Service to you.



THE

THE Proposal which *Emilia* has here made, might be an useful Lesson to young Ladies, if it were communicated to the Publick. How unhappy must the Condition of that Woman be, who has grown desperate enough to contemn even common Decency, and to avow her Passion in any Character. Here it was necessary for her to have called her Pride to her aid, or rather before her first Letter was sent to the Post-Office. I shall not presume to compare this last with the Contract she builds upon, but wait in expectation of your Graces Sense of it. We are now, Madam, to suppose the Lying-in, and the Christening; and I think they say she has proved in the Cause that his Lordship went to see the young Witness at the Nurse's; but in general we have a barren Season of News till the latter end of the following Month of *May*, where we find *Mau-*

ritio had been six Weeks absent, with
out once having written to *Emilia*,
or having taken Leave. On his re-
turn to Town, she revives the Cor-
respondence thus.



To Lord M—.

May, 1726.

I Never could have believed it possible for my dear Lord to use his *Eliza* ill; but your Actions convince me all things are possible. What have I done since this day six Weeks, that you rose up from my Bed, as I thought, fonder than ever: and yet to leave the Town without seeing or even writing to me, and be so long away; and tho' you writ to others, not favour me with a Line! But even that could have been easier borne, than to have you in Town since Yesterday, and not to have seen or heard from you. I believe, my dear Lord, I deserve a Visit much better than Those you paid your's to; for I am sure my Uneasiness and Fears has been

been far greater; and I have shed more Tears than all your Friends: Nor can I better express my Concern than by acknowledging I can bear your Change better than your Death. (O dreadful Words!) and I am told you have been very near it. Had you been lost, Grief, and Infamy, and Solitude, must have been my perpetual Lot; and Infamy and Want your Son's Portion. Methinks, that poor unhappy Infant deserves some Care, and should rather increase your Tenderness; but let my Fate be what it will, let me hear it from your own Mouth this Evening. Once more I adjure you, as you hope for Mercy from that great God before whom you must appear, to pity me; and let not Lady *Carrioli's* Threats take place. I will explain myself when I see you; which, if you have any regard left for me, will be this Night. Send me an Answer by the Bearer to give some Ease to my tortured Heart.

EMILIA

THUS the blooming Spring and genial Month of *May*, proved a nipping *December* to this Amour; the Lady's Intimacy began to sit very easy upon her, when she can mention it in Writing; but it seems his last Fondness was too violent to continue, for it ended in Satiety. The Danger which she mentions *Mauritio* had escaped, was that of the Seas; for he embarked in pure Compliment to our Viceroy, to attend him a cross the Channel, but not in the same Ship; he met with bad Weather, and for several Weeks was reported to be cast away. She is now, in so dejected a Condition, that he sees it a proper Time to impose his own Terms on her: Which, bad as they are, the unhappy Woman greedily accepts, as your Grace will amply understand by these few Lines.

-M

To



To Lord M--.

I Will call on my dear Lord according to his Directions; and in spite of Brother, Mother, or Sister, or all the World, I will do whatever you think fit; even to own myself publicly your Mistress: for I cannot, cannot, bear the Thoughts of parting. Adieu, my dear Life.

EMILIA.



MI-

MISERABLE Condition! Down-right Frenzy! but still there is worse to come: For he tells her, she must give his Mother, the Countess, Conviction. He gives her a Copy of the Letter she is to write for that purpose; she omits the Asseveration, on the Faith of a Christian: but that will not do; she must insert the Asseveration too, and so furnish out a piece of Evidence which has since been made use of against her; and all this in the vain hope of keeping a flitting Heart. When, alas! every Step our *Theseus* made, every Instance of Compliance he of late expected, might serve to demonstrate his Intention suddenly to be gone for ever, and to leave his forsaken *Ariadne*, complaining on the Shore. But here is her Letter to the Countess.



To the Right Honourable the
Countess of C—.

May 12th 1726.

Madam,

HAVING been informed how
greatly your Ladyship has
been disturbed at a false Report of
this Town, that I am Married to Lord
M—, Though I have not the Ho-
nour to be known to your Ladyship,
I think it incumbent on me to do him
Justice, and to satisfy you in so im-
portant a Matter. I therefore send
this to assure you, upon my Word,
and the Faith of a Christian, I am
not married to him, nor never was
married to him, or do I expect it:
neither

neither have I been the Cause of any
such Report to his Prejudice. I
am,

M A D A M,

Your Ladyship's

Most Humble

And Most

Obedient Servant.

E M I L I A

A NEW Beauty has now begun her Reign over *Mauritio's* Heart: Her Charms are heightened by the Smiles of *Plutus*, God of Gold; and our Wanderer is in Treaty to sell his Liberty; to put on the pleasing Chain with Another, which *Emilia* vainly hoped he would have worn with her: In vain the forsaken Dame flatters, resigns, expostulates, complains, and reproaches him for broken Vows: The new Amour proceeds, till common Fame at last awakes *Emilia* from her love-sick Dreams, to see *Mauritio's* Wedding-Day approaching; a Wedding-Day to join him to another! At once she arms her Soul with keen Resentment: Her Brother aids her Suit; she enters a Caveat in the *Spiritual Court* against *Mauritio's* Bannes and License, and then commences that long Contest, in which her own Oath was necessary to complete her Proof of a Contract
between

between her and *Mauritio*. This kind of Evidence was denied her by the single Judge* in her own Country, and many thought with Reason; but, it seems, your Great Men are of another Mind, and have allowed that Oath, we must believe, as Law directs: A Law, I fancy, made when Christianity was young, and People, even in their own Affairs, tho' to their Loss, could utter only Truth.

THE farther Knowledge of this Affair, I humbly hope from your Grace's Favour, to,

M A D A M,

DUBLIN,
May 4. 1731.

Your Grace's,

Most Obedient Servant,

M A R Y D I L L O N.

* Dr. TROTTER, Judge of the Consistory Court.



CONCLUSION.

*EMILIA'S Love is from the Soul sincere,
Confirm'd by Honour, and a Conscience
clear.*

SHE having, at length, obtained a *Final Sentence* (for a **MARRIAGE**) against Lord *Mauritio*: And, as this is now the Case, that joking old Batchelor, Major **PALME'S** Prediction, is likely to be verified. He always used to tell *Mauritio*, By G—, my Lord, they'll marry you.

His Lordship has now but one probable Method of falsifying the
Major's

Major's *Prophecy*, and, at the same time, escaping the Writ of *Excommunicato Capiendo*, (as the Lawyers call it) which is, *To keep himself intrenched in the Fastnesses of Glan-flesk or Mangerty.*

F I N I S.



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Verbum lat.

Or, without the Latin

Dr. JOHNSTOUN'S

DISSERTATION.

AGAINST

ECCLESIASTICAL COURTS.

And his last will God be

[Price One Shilling.]

Dean of Lincoln, in his Court, records a
most exemplary Piousness, but in Exce-
cution by the Bishop's superiors, who
plead a Magistrate for selling Judgment, and
ordered the Seat of Justice to be moved with
his skin, to deter his Successors from Bishops
and Corruption. A Noble Precedent, and wor-
thy the imitation of all succeeding Ages.

Verbum sat.

WE may, without RAGE,
Or, without *Imposition*,
Compare *Doctors-Commons*,
To SPAIN'S *Inquisition*.

Where Suits of the *People*
Are tumbled and tost,
'Till *Temporal Justice*
In *Spiritual's* lost.

ASTRÆA we find, is
Now fled to the *Skies*;

And has left a vast *Gulph*,

'Twixt Her *Heels*, and Their *Eyes*.

Dean *Prideaux*, in his *Connexion*, records a most exemplary Punishment put in Execution by one of the *Roman* Emperors, who Flead a Magistrate for selling Judgment, and ordered the *Seat of Justice* to be covered with his *Skin*, to deter his Successors from *Bribery* and *Corruption*. A Noble Precedent, and worthy the Imitation of all succeeding Ages.

Juridical Dissertation

CONCERNING THE

Scripture Doctrine

OF

Marriage Contracts,

AND THE

MARRIAGES of Cousin-Germans.

ILLUSTRATED

From the *Canon, Civil, and Statute-**Law*; wherein also the Foundation and Exercise of Ecclesiastical Authority are examined.

OCCASIONED

By some late Proceedings in *Doctors-Commons.**With the 4th Tract*

By JAMES JOHNSTOUN, LL.D.

The Legislature have, in several Instances, over-ruled the present Canons of the Church, as not consonant to the Law-Divine. ASGILL.*Magistrates oft-times give their VERDICT As if they felt the CAUSE, not heard it.* HUD.*God shall smite thee, thou WHITED-WALL! for sittest Thou to Judge me after the LAW, and commandest me to be smitten contrary to the LAW?* ST. PAUL.

L O N D O N :

Printed for the AUTHOR. M.DCC.XXXIV.

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conformable to the Law-Divine.
Magistrates of this City give their Verdict,
As if they felt the Cause, not heard it. HEB.
God shall judge thee, thou Wicked-WALL!
The Bible then to Judge me after the LAW.
I command thee to be just and comely. As
the LAW. SEP. 1741.

L O N D O N :
Printed by the Author, MDCCLXXIV.



TO THE
 Reverend Mr. GOOLE,
 OF
Witney in Oxfordshire.

S I R,

THE unjust Treatment
 you have received
 from a Pack of Knaves, dis-
 guised with the *Robe of Spi-
 ritual Power*, gave me the
 Original Inclination to dis-
 cuss some Instances of that
 Kind;

Kind; and examine to the
Root, that *Mystery* of *Ini-*
quity, in a short Disquifi-
 tion, which is here submitted
 to your Judgment, and ad-
 dressed to your Candor.

I am, S I R,

Your most obedient Serv^t.

J A. JOHNSTON.

S I X

AUTHORITIES Incontestable.

THERE is no such Thing as *Spiritual Jurisdiction*, All is *Civil*; the CHURCH'S is the same with the LORD MAYOR'S.

SELDEN.

PRIESTS seek t' avail themselves of *Names*,
Places, and *Titles*; and with these to join
Secular Power, tho' feigning still to Act
By Spiritual; to *Themselves* appropriating
 The SPIRIT of GOD, promis'd alike, and given
 To All Believers!

What will they then,
 But force the Spirit of GRACE itself; and bind
 His Comfort LIBERTY?

MILTON.

I have never yet spoken, even, with one CLERGYMAN, who hath had the Experience of both *Litigations*, that has not *ingenuously* confessed, that he had *rather*, in respect to his *Trouble*, *Charge*, and Satisfaction to his *Understanding*, have *Three* Suits depending in *Westminster-Hall*, than *One* in the ARCHES, or any other *Ecclesiastical-Court*.

Lord Chan. CLARENDON.

The

iv AUTHORITIES.

The PRESS hath owed CHURCH GOVERNORS a SHAME a long Time, and is but now beginning to pay off the Debt: The PRESS, that villainous Engine! invented much about the same Time with the REFORMATION; *That* hath done more Mischief to the DISCIPLINE of our Church, than all the DOCTRINE can make Amends for.

AND. MARAEL.

As to the Administration of ECCLESIASTICAL COURTS, He * looked on it as one of the most corrupt he had ever seen.

Bp. BURNET.

When any EVIL we pretend to lament, is such as may, in some Measure, be helped and remedied by our OWN Endeavours; there to Grieve and sit Still, is by no means a Testimony of a sincere and hearty Concern; It is rather a Testimony of the contrary; that the Grief and Concern, we would be thought to have, is only Pretended and Hypocritical.

Bp. GIBSON.

* That Great, Good, and Learned Prelate Bp. Leightoun.

A

J U R I D I C A L

DISSERTATION.

GOD, who is the GOD of *Order*, not of *Confusion*, appointed an OEconomy of his Creatures, collectively considered ; the Original of which was to commence from the Institution of *Families*, beginning with the *Parents* of human Race, and continued to the successive Alliances of their *Descendants*.

From the Conjunction of a Number of *Families* arose *Government*, or *Political Community*, which was

B

only

only a larger Household, as a Family was a Government in Miniature.

The Corner-Stone of this harmonious Fabrick was a Principle of strict Honour and Justice, the Interest was to be *One* and *undivided*; but since there is no Order without a Pre-eminence, that was allotted to the *Husband*:

Therefore, in all subsequent Contracts on this Footing, the Claim and Right of the Man is the Prior Claim, and intitled to some Privilege in the Proceeding and the Determination.

Between the first Authors of human kind, there was no Breach of Contract, that the Fountain might shew how clear the Stream should be maintained.

When

When Injustice prevailed among Relations, it was the Divine Declaration, If thou dost well, shalt thou not be accepted ; if thou dost Evil, Sin lieth at thy Door.

This laid the Basis of Virtue and social Bliss on the Foundation of Righteousness, and gave an eternal Caution against the Infringement of it :

For the Glory of God, and the greatest Felicity of Man :

Contracts of Marriage are not properly a distinct Subject from it, because Marriage itself is a Contract, according to the Laws of God, and of such other Laws as oblige the Conscience.

Therefore the Breach of a Nuptial Agreement, so qualified, is a

leffer kind of Adultery, * and carries an Impression of its Guilt and Enormity.

A Contract is first to be considered in the Law of Nature, Right Reason, and Moral Virtue.

It is a Consent mutually expressed of certain Terms or Conditions to be reciprocally performed :

The Expression of the Consent is a sufficient Obligation to perform it ;

And the standing to Compacts is the first Law of Society.

The principal Laws of Marriage, in the *Jewish* Dispensation, are promulged, *Levit. xviii.* where the Degrees of Affinity are pointed out, that exclude the Tye.

Satisfaction

* See The *Whole Duty of Man*.

Satisfaction and Advantage are the two great Ends of Wedlock.

To possess an Object of Inclination, and adjust the external Circumstances of Life to the Ballance of the utmost Content we propose to enjoy, are the general Motives.

By these the Conduct is apt to be mostly byassed, and the Range of these Thoughts is only limited by Conscience of Duty, to the Injunctions of God, Natural and Revealed, and the Decrees of lawful Authority.

To cut off Perplexities and Disputes, as to the Ties of Consanguinity, it is a Sanction, both of Divine and Civil Right, that Kindred, in certain Distinctions, shall be a Bar to Marriage.

This

This Liberty at first was more extended, for the Propagation of human Race, but was afterwards restrained by the Law of *Moses*, and the Laws of several Nations.

In the direct Line of Ascent, and Descent, the Marriage of Mothers, Aunts, and so on Upwards; as of Daughters, Nieces, and so on Downwards, in all Generations, is prohibited :

Yet *Mosaic* Marriages were to be usually practised among the Kindred; so that the Alliance was to be sought in the Degree of Cousins.

Marriage between First-Cousins, or Cousin-Germans, is not forbidden by the *Mosaic* Law.

According

According to Mr. *Hales's* Discussion of this Case, * First-Cousins are in the Second Degree of Kindred, from the Father, and Father's Brother, the First :

They are the Father's Brother's Son or Daughter ;

As second Cousins are the Father's Brother's Grandson or Granddaughter ; and so on to the Third and Fourth Cousins.

There is a Difference in this between the Civil and the Canon Law.

In the Canon Law Second Cousins are in the Third Degree of Kindred, as from the Father and his Brother :

But

* A Letter concerning the Lawfulness of Marriage between Cousin-Germans. See his *Golden Remains*. Octavo

But in the Civil Law, there being as many Degrees as Persons, taking away the Head or Top, that is him in whom the Kindred first unites : They are in the Sixth Degree, for Two Degrees in the Civil, are but One in the Canon Law.

In which the Rule is, that in the equal Line, there is a Distance of the same Degree of Relations between one another, as there is from the Head.

This explains variously what is alledged from some Laws of the Third Degree.

There are Precedents in Scripture of the Marriage of Cousin-Germans :

The Daughters *Zelophe* had were married to their Uncle's Sons ; as
the

the Daughter of *Caleb* to his Brother's Son :

The *Roman* Laws allowed it, and their Practice confirmed it ; as in the Instances of *Lucius* and *Arnus*, *Ligustinus*, *Melius*, *Marcellus* and *Brutus*.

The Emperor *Theodosius* was the first who restrained them, as appears in his Code :

But his Sons repealed it, and left the Law, as now, in *Justinian*.

Afterwards, the Bishops of *Rome* prohibited the Marriage of all Cousins to the Seventh Generation :

At last restrained it within Four Descents, where now it rests, except by Dispensation.

The Prevalence and Usage of the Canon Law, in all Parts, gave
C Rife

Rise to the Prohibition, and Opinion of it.

Which Use, by a Law 32 *Hen.* VIII. and 1 *Eliz.* was reversed, and the State of Marriage reduced to the *Mosaic* Standard.

Now all Zeal for Opinions ought to be governed by Knowledge :

And the Rule of Conscience is the Law of God :

What *Moses* declares of near Kindred, is explained by himself in the Particulars :

And what is not forbidden by a prohibitory Law is permitted.

The Authorities of *Augustin*, *Ambrose*, and *Gregory*, relate only to *First Cousins*.

Ambrose and *Augustin* wrote when the *Theodosian* Law prevailed.

The

The Councils decreed chiefly as influenced by the Sense of their Principals :

Indeed, some of the Antient and Modern Churches, have debarred the Marriage of First Cousins ;

But none the Second, except the Church of *Rome*.

The first was allowed by *Zanchius*, *Beza*, *Calvin*, *Bucer*, *Melancthon*, and the most celebrated Protestant Divines.

Calvin qualifies it by a View of Offence or Scandal :

The Churches of *Geneva*, the *Palatinate*, *Misnia*, *Turingia*, have forbidden it to the First,

But allowed it to the Second, which are, as hinted, in the Third Degree of Kindred.

It has been argued, That a more remote Degree than the First being forbidden, therefore the First is unlawful :

But this respects only the Line of direct Ascent or Descent, Aunts or Nieces,

Not the Collateral, which is the Instance of Cousins.

Therefore the Question, Whether the Father's Brother's Wife be not more remote, than the Father's Brother's Daughter, is not to the Point :

For the former, which is an Aunt, is *nearer* than a Cousin, as the latter is :

And the Reason that some Degrees farther removed are excluded from Marriage,

When

When some nearer are allowed, is, That the direct Line is unlawful in all possible Degrees, as Brother's Grand-children ; and so on downwards ;

So all Nieces, Aunts, Mothers, in every Calculation,

The more or most remote in the direct Line, are always unlawful, to all Generations :

But it does not thence follow to the Collateral, or Cousins, which are not contrary to the Law of *Moses* ;

The Confusion arises from making a wrong Comparison, and mistaking the Case.

If therefore it should be alledged, that the Church of *England* forbids the Marriage of Second Cousins, and allows the First,

Admitting

Admitting that to be Fact, which yet does not clearly appear in the Table of Consanguinity, and is contradicted by the Statute,

The Answer is this ; That the Nearness of direct Degrees is confounded with the Collateral ;

Or the Word Cousin is mistaken :

For, the First Cousin is only the Father's Brother's ; or, Mother's Sister's Son or Daughter.

The Second Cousin is only the Father's Brother's ; or, Mother's Sister's Grand-son or Grand-daughter ;

The whole Descent of these, in this Line, are *Cousins* ;

But the Brother's Children, Grand-children, and so on downwards to Infinity, are not Cousins, but Nephews and Nieces ;

The

The Marriage of which is always unlawful :

That is, it is not lawful for a Man to marry his Brother's Children, and so on ; they are Nieces.

Nor for a Woman to marry her Sister's Children, and so on ; they are Nephews :

But the Law of *Moses* does not forbid to marry a Father's Brother's Child, or Grand-child, which is a First and Second Cousin ;

For *Moses* commanded to marry among Kindred, to keep up the Tribes ;

But forbade certain Kindred, not these : Thus,

A Degree farther off may be unlawful ;

And yet a Degree nearer may be lawful.

If

If the Degree farther off be in the direct Line, which is always unlawful,

And the Degree nearer be collateral, which is lawful.

To marry a Brother's Child, or Grand-child, is forbidden, because it is the direct Line.

To marry a Father's Brother's Child, not forbidden, because it is collateral, not the direct Line.

Moses forbids the direct, not the collateral.

By his Law a *Jew* may marry a Cousin, not a Niece or Nephew ;

For it was a Law to marry in the Kindred, because of the *Tribes* and *Messiah*, but not in the direct Kindred ;

The collateral Degrees were authorized otherwise, being obliged
to

to marry in the Kindred, they could not marry at all ; and these are confounded in the Question.

The Collateral or Oblique is, when you are obliged to reckon upwards, first to a Father or Mother, then laterally to their Brother or Sister.

The Direct is when you compute, without reckoning up from the Parents, and go immediately to the Brother and Sister, and their Descent :

In respect to a Brother's Children a Man is direct ;

In respect to a Father's Brother's Children, oblique.

This is the State of the *Mosaic* Instruction ;

But in the present Case, the

D Judges

Judges of the Spiritual Court have three Rules,

Either the Law of *Moses*, according to the Religion of the Parties,

By which the Marriage was not forbidden :

For all the Degrees forbidden, *Levit. xviii.* are only Degrees by Blood, and only such as are mentioned with those in the direct Line from them ;

Or else the Spiritual Court determines by the Canon Law, and practise in that Court :

But the Canon Law of *Rome* is here abolished,

And the Canons of the Church were never confirmed by Parliament ;

So that by the Canon Law in that Court, there is no Plea against such a Marriage, because it is repealed ;

And from the Canonical Tables, being no Statutes, a Prohibition may lye :

Since there is a Statute to sue for it upon, that of *Henry VIII.* above quoted,

It remains, that by the Law of the Land, and of *Moses*, such a Marriage is lawful ;

Even the Tables of Consanguinity do not seem to me to make it unlawful ;

And there lies a Prohibition, or an Appeal, from them to the Statutes.

The Embarrassment is, that two *Jews* are tried in a Court where

neither the Laws of *Moses*, nor of *Christ*, determine;

And where the Canons and Tables of the Church of *Rome*, and of *England*, cannot *validly* determine,

Because of a Statute, and that the Thing is finally civil, and contains Matter of civil Property.

Having the Advantage of Mr. *Hales's* Opinion above-mentioned, I have added several Observations to it, and put the Question in a fuller and ampler View than all the Writers on the Point which to me have occurred.

Before I advance to consider the Contract, which is the other Part of the Argument, I would, in a moral and practical Light, interperse these Remarks,

That

That in all Conduct, as well as Contention, there is some proper, most excellent Rule, to set us clear and easy :

A Standard of Truth, of Right and Wrong, of Good and Evil :

But to discover, much more to agree on being decided by it, is the Difficulty.

We are framed reasonable Creatures, to be guided by Reason, the best Judgment, in our Actions :

And in this the Bible furnishes us with the utmost Assistance, as to Reason, Law, Conscience, Obligation,

The Law of Nature, and of *Moses*, agree in their general efficient Cause :

For God is the Author of both ;
both are conversant about moral
Good, Precepts

Precepts of Honour, and Checks on Iniquity :

To glorify God, and promote the Benefit of Mankind :

Where no Law is, there is no Transgression, Rom. iv. 15.

Therefore there have been always Laws for a Regulation of Action,

To chuse Good, and refuse Evil, by their Direction.

God gave a Law, even in the State of Innocence,

To make the first Parents more careful of obeying, and fearful of transgressing his Command.

If a Law was at first thought requisite,

It was more necessary afterwards, when Sin had gained Footing in the

the World, by the Means of that primitive Transgression ;

That it was difficult, if not impossible, for the Sons of Men to walk uprightly ;

But the best were liable, in numberless Respects, if left to themselves, to Mistakes and Errors ;

Therefore a gracious God ever imparted Rules to steer their Course,

But varied his Laws, as Circumstances varied :

When the Number of the chosen People was small, the Laws were few ;

When that increased, they were multiplied,

And transmitted in Writing, that neither Ignorance, nor Forgetfulness,

ness, might be pleaded in Excuse for the Violation of them :

They were given because of Transgressions ; that is, to prevent them,

And to put us on searching out a Remedy against them.

Proceed we now to the latter Part of the Argument,

What is a Matrimonial Contract, or what not ?

A lawful, just, and full Consent, is the instrumental Cause of Marriage,

With the Consent of Parents, if the Contracting Parties be under their Care and Government, unless in a *Second* Marriage, when the Parties having formed a Distinct Family, and Interest, are Masters of themselves, and the Desire of
such

such Consent is left to voluntary Prudence :

As the Effence of every Contract is the Agreement, or Consent ; so that Contract is valid which is attended with the following Qualities :

When it is lawful, congruous to the Laws of God, Nature, and our Country ;

When it is honest and honourable ;

When it is just and free, not primarily compelled by Fear or Menaces ;

In fine, the Consent which makes a Contract, ought to be sincere, not designed to circumvent or deceive.

Now, to discourse fully on the Effence and Requisites of a Matrimonial

E

monial

monial Contract, will be to enter a spacious Field of Argument :

What a Contract is in several Nations, Religions, and Laws ;

And the Qualifications of a particular Contract :

Let me premise, that the *Jews* have always entertained a greater Veneration for the Conjugal Alliance, than the *Gentiles* ; for two Reasons :

The first is, That they know the *Messiah* was to be born of the Posterity of the Patriarch *Abraham*, from whom they descended :

The second, That each of them hoped he would be born of his Family ;

And this was one Reason of a Plurality of Wives, a Polygamy, among them, in a Desire of a greater

greater Number of Children, and a greater Probability of the *Messiah*.

The *Romanists* have exalted Marriage to the Dignity of a Sacrament ; it depends solely on the Definition of a Sacrament, whether that Doctrine be found, or otherwise :

But this has multiplied the Number of Matrimonial Questions, in that Religion, beyond any other.

We are not, however, now to consider that Point, but the Contract :

By the antient *Roman* Law all Contracts were valid without writing ;

Contracts may be made by Letters, by Messages, by Deputies between the Absent :

Contracts are looked upon as Laws :

Obscurities and Doubts in Contracts of Marriage, must be explained by the general Intention, and Expressions of the Contractors.

Contracts may regard a Condition which is past, present, or future :

The Qualities of a Condition are, that it be just and practicable.

And a Contract cannot be annulled, but by the Incapacity of the Person, Deceit, Force, or the Unlawfulness of the Thing.

The whole Question here is not properly of the Nature, or Validity, but the Fact, the Existence of a Matrimonial Contract :

For the Essence of Contracts in general, and those of Wedlock in particular,

particular, is the same at all Times, and in all Countries :

A declared Consent to some Articles, mutually expressed, and rightly qualified against a Nullity,

If the Persons be of Age, at their own Disposal, or consented to by the proper Relatives, where that Consent is requisite ;

And when the Understanding and Affections are free, no just Bar intervening, no Compulsion or Imposture ;

In this Case the Agreement is obligatory ; A CONTRACT between a *Gentleman* and a *Lady* of the *Jewish* Religion, has been litigated.

Mr. *Hales's* Plea against it is,

That the Condition of the Relations

lations Consent to the Marriage, was always mentioned, on her Part,

Which does not yet appear in the Evidence which I have met with, except that of the Lady's *own* Servant, who attests her *private Words* of a Relation's Consent, but seems not to prove, that a Promise of Marriage elsewhere was not frequently made without the Mention of that Condition.

There are *two* main Principles by which every Juridical Process is to be decided, the Testimonies of proper Witnesses, and the Circumstances of the Thing in all Respects considered.

This is the Rule of Judgment in all Process, Ecclesiastical or Civil :

Eccle-

Ecclesiastical Courts are called *Courts Christian, Spiritual*, and the *Bishops Courts* :

They are falsly called *Christian*, for there is no Law of *Christ* for them, or any one of their Proceedings :

Which, methinks should be attended to in a Protestant Nation, which professes to abjure the Church of *Rome*, and therefore the Canon Law ; and to make the Bible the Law of Faith and Manners :

On that Ground *Luther* publicly burnt the Canon Law, which the Author of the *Codex* has made the Foundation of his Work ; this is reforming Backwards :

And I cannot here omit two Observations ;

i. That

1. That the Decrees and Decretals of Popes, which are the Basis of the Canon Law, and of the *Codex*, are FORGERIES.

2. That the Council of *Trent* has amended several Parts of the Canon Law, which stand unamended in the *Codex*; by which means that *Work* is now the only System of the worst and most unreformed Popery; and yet the Author of it flourisheth, and has Power in a Protestant Country, which has spent above One hundred Millions of Money to exclude Popery.

MONSTRUM HORRENDUM.

But to pass by this Romantic *Colossus* of Ecclesiastic Power, more inconsistent than *Nebuchadnezzar's* Image, sharper than his Talons,
and

and hotter than his Furnace, let us farther remark,

That these Courts are called *Spiritual*, tho' to a Protestant the *Bible* is the only Spiritual Rule, and the Pretence, *pro salute animæ*, gravely operates towards *starving* here, and *damning* hereafter.

How can the Soul be made *Evangelical*, by what is itself *Anti-Evangelical*?

They are called *Bishops Courts*.

Constantine and *Justinian*, to strengthen their Party, coaxed the Bishops, and they, to advance their Schemes, opposite to the Gospel, and as different from *Christ*, as *Christ* from *Jupiter*, coaxed the Emperors, and thus went the Game ;

F

But

But why does not Dr. *Codex* shew *his Commission* from *Christ*, or some *Apostle*? Where is it? His *Jure divino*?

The Consecrating Clause for Bishops in our *Liturgy*, conveyed no Commission at all: It was a Blank Warrant 'till the Amendment of it under King *Charles II.* therefore it is null *ab initio*.

And does not one Arch-bishop over many Bishops, plead to one Pope over all? Is this the Beauty of Courts Christian?

It is a Moot Point yet, whether Process issuing without the King's Name and Seal, may not be Demurred to, and perhaps be proved a *Premunire*.

It is observable, that, Articles there, begin *in the Name of God*; there-

therefore the Court ought to be very honest and incorrupt.

It is my Judgment, that the Marriage Contract between the Two *Jews*, was as valid as this would be ;

“ *I will pay you, for Value re-*
 “ *ceived, Twelve Pounds Sterling*
 “ *To-morrow Morning at Nine o’*
 “ *Clock :*

Yet these are Words *de futuro*.

I shall conclude this Dissertation with observing, that the Original Contract of *Augustin*, the first Arch-bishop of *Canterbury*, with King *Ethelbert*, was, to plant Christianity here ; but, as *Bede* records it, *nulla coactione*, with no Coercion or Compulsion :

But do not these Courts and Bishops *compel* ? Therefore their Right is void, as subverting the Condition on which they were here, at first, allowed :

Afterwards, they grew so familiar as to sit Cheek by Jowl with the Civil Magistrate, screwed themselves into *Lordship*, and ordered Matters so artfully, that Noblemen, Gentlemen, and Ladies, gave them Lands, Tenements, and Perquisites, from their own Families ; all which, those Families ought, and may, recover by Common Law, if granted in false Suggestions, or no valuable Consideration appearing in the Title Deeds, which, it is hoped, some Judge, or Parliament, will
call

call to Account, and Award Penalties and Satisfaction, proportioned to the uninterrupted Succession of the Injury : 'Till when,

Such are thy GODS, O Israel!



P O S T S C R I P T.

FOR farther Concernment, the Reader is referred to the Perusal of Four late Ecclesiastical Determinations ; all which are now made public, *viz.*

I. The Case of *Elizabeth Fitz-Maurice* alias *Leeson*, and the Lord *William Fitz-Maurice*, relating to a Marriage Contract, determined by a Court of Delegates, at Serjeant's - Inn - Hall, in Chancery-Lane, March 14, 1732-3.

II. The Case of Miss *Hudson*, and the Reverend Mr. *John Goole*, of *Witney* in *Oxfordshire*, relating to a Marriage-Contract determined by the Arches-Court of Canterbury.

III. The

III. The Proceedings at large in the CASE of Mr. *Jacob Mendes Da Costa*, and Mrs. *Catharine Da Costa Villa Real*. Determined likewise by the *Arches-Court* of *Canterbury*, at *Doctor's-Commons*, June 25, 1733.

IV. The Proceedings in the *Arches-Court* of *Canterbury*, between the Honourable *Catharine Elizabeth Weld* alias *Aston*, and her Husband *Edward Weld*, Esq; of *Lulworth-Castle*, in *Dorsetshire*, whom she libelled for IMPOTENCY. Determined also in the said Court, and such Determination afterwards confirmed by a Court of *Delegates*.

The E N D.

III. The Proceedings at large in
the Case of Mr. Jacob Alen, De
Coffe, and Mrs. Catherine De Coffe
Vile Reel. Determined likewise by
the Master-Court of Chancery, at
Dorset's-Garden, June 22. 1733.

IV. The Proceedings in the
Master-Court of Chancery, be-
tween the Honorable Catherine
Alen, and
her I
of
whom
Determined in the said Court
and such Determination afterwards
contingent by a Court of Delegates.

